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सं. 45] नई दिल्ली, नवम्बर 1—नवम्बर 7, 2015, शनिवार/कार्तिक 10—कार्तिक 16, 1937
No. 45] NEW DELHI, NOVEMBER 1—NOVEMBER 7, 2015, SATURDAY/KARTIKA 10—KARTIKA 16, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय

(भारत के महारजिस्ट्रार का कार्यालय)

नई दिल्ली, 2 नवम्बर, 2015

का.आ. 2086.—जन्म और मृत्यु रजिस्ट्रीकरण अधिनियम, 1969 (1969 का 18) की धारा 3 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारत के महारजिस्ट्रार की इस अधिनियम के अंतर्गत अपने कार्यों और दायित्वों के निर्वहन में सहायता करने के प्रयोजन से एतद्वारा श्री कामेश्वर ओझा, उप महानिदेशक, भारत के महारजिस्ट्रार का कार्यालय को अपर महारजिस्ट्रार के रूप में नियुक्त करती है।

[सं. 1/6/2006-प्रशा. III]

राम गोपाल, अवर सचिव

MINISTRY OF HOME AFFAIRS

(Office of the Registrar General, India)

New Delhi, the 2nd November, 2015

S.O. 2086.—In exercise of the powers conferred by sub-section (2) of section-3 of the Registration of Births and Deaths Act, 1969 (18 of 1969), the Central Government

hereby appoints Shri Kameshwar Ojha, Deputy Director General in the office of the Registrar General, India as Additional Registrar General for the purpose of assisting the Registrar General, India in discharging his functions and responsibilities under this Act.

[No. 1/6/2006-Ad.-III]

RAM GOPAL, Under Secy.

विदेश मंत्रालय

(सी.पी.बी. प्रभाग)

नई दिल्ली, 20 अक्टूबर, 2015

का.आ. 2087.—राजनयिक और कौंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार श्री मोहमद अली जौहर, सहायक को 20 अक्टूबर, 2015 से भारत के दूतावास, बुडापेस्ट में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS**(CPV Division)**

New Delhi, the 20th October, 2015

S.O. 2087.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Md. Ali Jouher, Assistant in Embassy of India, Budapest to perform the Consular services as Assistant Consular Officer with effect from 20th October, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 23 अक्टूबर, 2015

का.आ. 2088.—राजनयिक और कौंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार श्री दीपक कुमार शर्मा और श्री आयुश बडोनी, सहायक को 28 अक्टूबर, 2015 से भारत के दूतावास, यंगून में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

New Delhi, the 23rd October, 2015

S.O. 2088.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises (1) Shri Deepak Kumar Sharma, Assistant and (2) Shri Ayush Badoni, Assistant in Embassy of India, Yangaon to perform the Consular services as Assistant Consular Officer with effect from 28th October, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 23 अक्टूबर, 2015

का.आ. 2089.—राजनयिक और कौंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार श्री नन्द किशोर, सहायक, श्री डी. एस. विष्ट, सहायक और श्री संदीप सरकार, सहायक को 23 अक्टूबर, 2015 से भारत के दूतावास, पैरिस में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

New Delhi, the 23rd October, 2015

S.O. 2089.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths

and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises (1) Shri Nand Kishore, Assistant, (2) Shri D.S. Bisht, Assistant (3) Shri Sandip Sarkar, Assistant, in Embassy of India, Paris to perform the Consular services as Assistant Consular Officer with effect from 23rd October, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 26 अक्टूबर, 2015

का.आ. 2090.—राजनयिक और कौंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार श्री हेमन्त जंगीद, निम्न श्रेणी लिपिक को 26 अक्टूबर, 2015 से भारत के दूतावास, जूबा में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

New Delhi, the 26th October, 2015

S.O. 2090.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises (1) Shri Hemant Jangid, LDC in Embassy of India, Juba to perform the Consular services as Assistant Consular Officer with effect from 26th October, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2091.—राजनयिक और कौंसुलीय अधिकारी (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार श्री संदीप कुमार सिंह, सहायक को 28 अक्टूबर, 2015 से भारतीय उच्चायोग, मापुतो में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

New Delhi, the 28th October, 2015

S.O. 2091.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri Sandeep Kumar Singh, Assistant in High Commission of India, Maputo to perform the Consular service as Assistant Consular Officer with effect from 28th October, 2015.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

सामाजिक न्याय और अधिकारिता मंत्रालय

(सामाजिक न्याय और अधिकारिता विभाग)

नई दिल्ली, 27 अक्टूबर, 2015

का.आ. 2092.—राष्ट्रीय अनुसूचित जनजाति आयोग (एनसीएसटी) जो अब तक सामाजिक न्याय और अधिकारिता मंत्रालय के प्रशासनिक नियंत्रणाधीन था, के ग्यारह (11) संयुक्त संवर्ग के पदों अर्थात् निदेशक (ग्रेड वेतन : 7600 रुपए) के 4 पद, उप निदेशक (ग्रेड वेतन : 6600 रुपए) के 2 पद और सहायक निदेशक (ग्रेड वेतन : 5400 रुपए) के 5 पद, को जनजातीय कार्य मंत्रालय के प्रशासनिक नियंत्रणाधीन उनके स्टाफ में तत्काल प्रभाव से स्थानांतरित किया जाता है।

[सं. ए-42018/53/2009-स्था. I]

जे. पी. दत्त, उप सचिव

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT**(Department of Social Justice and Empowerment)**

New Delhi, the 27th October, 2015

S.O. 2092.—The Eleven (11) joint cadre viz. 4 posts of Director (Grade pay: Rs. 7600), 2 posts of Deputy Director (Grade pay: Rs. 6600) and 5 posts of Assistant Director (Grade pay: Rs. 5400) assigned with National Commission for Scheduled Tribes (NCST) which were hitherto under the administrative control of Ministry of Social Justice and Empowerment (M/o SJ&E) stands transferred to the strength and administrative control of Ministry of Tribal Affairs (MoTA) with immediate effect.

[No. A-42018/53/2009-Estt.I]

J. P. DUTT, Dy. Secy.

एवं षडयंत्रों या उसी संव्यवहार में किये गए अथवा उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार समस्त हरियाणा राज्य में करती है।

[फा. सं. 228/49/2015-एवीडी-II]

अजीत कुमार, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**(Department of Personnel and Training)**

New Delhi, the 28th October, 2015

S.O. 2093.—In exercise of the powers conferred by sub-section (1) of section 5 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent by order and in the name of the Governor of Haryana enclosed with request letter No. 20/SPL/2-15-3 HGI dated 22nd October 2015. hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Haryana for investigation of FIR No. 325/2015 dated 20-10-15 U/s 147/149/452/436/307/302 IPC & 3/33/89 SC/ST Act Registered at Police Station Sadar Ballabgarh, Faridabad, Haryana and attempt, abetment and conspiracies in relation to or in connection with the above mentioned offence and any other offence or offences committed in course of the same transaction or arising out of the same facts.

[F. No. 228/49/2015-AVD-II]

AJIT KUMAR, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2093.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, संलग्न अनुरोध पत्र संख्या 20/एस.पी.एल/2-15-3 एच.जी.आई. दिनांक 22 अक्टूबर, 2015 के माध्यम से हरियाणा के राज्यपाल के नाम एवं आदेश द्वारा प्राप्त सहमति से भारतीय दंड संहिता की धारा- 147/149/452/436/307/302 एवं 3/33/89 एस.सी./एस.टी. अधिनियम के अधीन पुलिस स्टेशन सदर बल्लबगढ़, फरीदाबाद, हरियाणा में पंजीकृत अपराध मामला संख्या 325/2015 दिनांकित 20-10-2015 एवं उपर्युक्त अपराधों में किए गये प्रयासों, दुष्प्रेरणाओं

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 26 अक्टूबर, 2015

का.आ. 2094.—भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, संबद्ध विश्वविद्यालय के नाम में परिवर्तन होने के कारण भारतीय चिकित्सा परिषद से परामर्श करने के पश्चात्, एतद्वारा उक्त अधिनियम की प्रथम अनुसूची में और निम्नलिखित संशोधन करती है, अर्थात् :
उक्त अनुसूची में —

(क) आर्यभट्ट नॉलेज यूनिवर्सिटी, पटना, विहार के सामने 'मान्यताप्राप्त चिकित्सा अर्हता' [आगे कॉलम (2) के तौर पर उल्लिखित] शीर्ष के अंतर्गत, अंतिम प्रविष्टि के बाद और 'पंजीकरण के लिए संक्षिप्त रूप' [आगे कॉलम (3) के तौर पर उल्लिखित] शीर्षक के अंतर्गत, निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात्:-

(2)	(3)
मजिस्टार चिरुर्जी (प्लास्टिक सर्जरी)	एम.सी.एच. (प्लास्टिक सर्जरी) (यह 2011 में अथवा उसके बाद पटना मेडिकल कालेज, पटना, बिहार में प्रशिक्षित किए जा रहे छात्रों के संबंध में आर्यभट्ट नॉलेज यूनिवर्सिटी, पटना, बिहार द्वारा स्वीकृत किए जाने पर मान्यताप्राप्त चिकित्सा अर्हता होगी)।

सभी के लिए टिप्पणी :

1. स्नातकोत्तर पाठ्यक्रम के लिए स्वीकृत मान्यता 5 वर्ष की अधिकतम अवधि के लिए होगी, जिसके बाद इसका नवीकरण किया जाएगा।

2. उप-धारा 4 में अपेक्षित अनुसार मान्यता को समय पर नवीकरण नहीं कराने के फलस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रम में निरपवाद रूप से दाखिला बंद हो जाएगा।

[सं. यू. 12012/560/2015-एमई-I]

डी. वी. के. राव, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 26th October, 2015

S.O. 2094.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change of affiliating University, of the qualification namely :—

In the said Schedule —

(a) against “Aryabhatta Knowledge University, Patna, Bihar” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely:—

(2)	(3)
“Magistrar Chirurgiae (Plastic Surgery)	M.Ch. (Plastic Surgery) (This shall be a recognised medical qualification when granted by Aryabhatta Knowledge University, Patna, Bihar in respect of students being trained at Patna Medical College, Patna, Bihar on or after 2011).

Note to all:

1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed,

2. Failure to seek timely renewal of recognition as required in sub-clause 4 shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U. 12012/560/2015-ME-I]

D. V. K. RAO, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 15 अक्टूबर, 2015

का.आ. 2095.—केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में नीचे अनुसूची के स्तंभ (1) में उल्लिखित व्यक्ति को उक्त अनुसूची के स्तंभ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र की बाबत, उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है अर्थात्:—

प्राधिकारी का नाम और पता	क्षेत्र
(1)	(2)
श्री अरविन्द खरे, रिटायर्ड संयुक्त संचालक, (उद्योग), मध्य प्रदेश राज्य मल्लावरम-भोपाल-भीलवाड़ा-विजयपुर नेचरल गैस पाइपलाइन नेटवर्क जीएसपीएल इंडिया ट्रांसको लिमिटेड सेक्टर-बी, 9/8, महाकाल वाणिज्य केन्द्र, नानाखेरा, उज्जैन - 456 010, मध्य प्रदेश राज्य	मध्य प्रदेश राज्य

2. यह अधिसूचना 01-04-2015 से प्रभावी मानी जायेगी।

[फा. सं. एल-14014/39/2011-जी.पी.-II]

श्री प्रकाश अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 15th October, 2015

S.O. 2095.—In pursuance of clause (a) of section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land Act, 1962 (50 of 1962), the Central Government hereby Authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act,

in respect of the areas mentioned in column (2) of the said Schedule namely:—

Name and Address of the Authority	Area of Jurisdiction
(1)	(2)
Shri Arvind Khare, Retd. Joint Director (Industries) Government of Madhya Pradesh Mallavaram-Bhopal-Bhilware- Vijaipur Natural Gas Pipeline Project. GSPL INDIA TRANSCO Limited Sector-B 9/8, Mahakal Vanijya Kendra, Nanakheda, Ujjain-456010, (Madhya Pradesh)	For the State of Madhya Pradesh

2. This notification will be deemed to be effective from 01-04-2015.

[F. No. L-14014/39/2011-GP-II]

SHRI PRAKASH AGARWAL, Under Secy.

वस्त्र मंत्रालय

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2096.—केन्द्रीय सरकार, (संघ के शासकीय प्रयोजनों के लिए) राजभाषा नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालयों को जिसके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

- कोसा परीक्षण केंद्र, केन्द्रीय रेशम प्रौद्योगिकीय अनुसंधान संस्थान, केन्द्रीय रेशम बोर्ड, सरकारी कोसा बाजार, बी.एम. रोड, रामनगरम-571511 (कर्नाटक)
- कच्चा रेशम परीक्षण केंद्र, केन्द्रीय रेशम प्रौद्योगिकीय अनुसंधान संस्थान, केन्द्रीय रेशम बोर्ड, सरकारी आदर्श बीजागर काम्पलैक्स, सिद्दलगट्टा-562105 (कर्नाटक)

[सं. ई-11016/1/2015-हिंदी]

गीता नारायण, संयुक्त सचिव

MINISTRY OF TEXTILES

New Delhi, the 29th October, 2015

S.O. 2096.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for the official purpose of the Union) Rules, 1976. the Central Government, hereby notifies the following offices of the Ministry of Textiles, more than

80% staff whereof have acquired working knowledge of Hindi:

1. Cocoon Testing Centre, CSTRI, Central Silk Board, Govt. cocoon Market, B. M. Road, Ramnagaram-571511 (Karnataka)
2. Raw Silk Testing Centre, CSTRI, Central Silk Board, Govt. Model Grainage Complex, Siddalaghatta-562105 (Karnataka)

[No. E.-11016/1/2015-Hindi]

GEETA NARAYAN, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2097.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार, भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/39/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/10/2015 को प्राप्त हुआ था।

[सं. एल-40012/256/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 28th October, 2015

S.O. 2097.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/39/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom, BSNL and their workman, which was received by the Central Government on 27/10/2015.

[No. L-40012/256/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/39/2001

Shri Bherulal, S/o Ratanlal,
Village Sagoria,
Tehsil Garodh,
Mandsour (MP)

...Workman

Versus

Chief General Manager,
Telecom, BSNL,
Hoshangabad Road, Bhopal

Telecom District Engineer,
Shajapur

...Management

AWARD

Passed on this 28th day of September 2015

1. As per letter dated 18-1-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/256/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Bherulal, S/o Ratanlal w.e.f. September 1987 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/4. Case of workman is that 2nd party no.2 engaged temporary employee in electrification Project, Ratlam Kota Division. Workman was engaged by Telecom Deptt. Services were terminated without notice. That employee completing more than 240 days cannot be terminated. Such employee gets eligibility for permanent appointment. Workman had requested reinstatement as per application dated 19-10-96. Any order was not passed on his application. Workman and others approached CAT. They were allowed time for approaching ALC, Bhopal for redressal of their grievance. Document about attendance was not submitted. 2nd party denied the documents. Workman submits that he worked more than 365 days. He acquired status of permanent employee. That he signed on the documents about payment of wages as temporary employee. Workman shows willingness to produce relevant documents in support of his claim. As per ratio held by Apex Court in various cases, workman has completed working days getting the status of regular employee. On such ground, workman prays for appropriate reliefs.

3. 2nd party filed Written Statement at Page 8/1 to 8/9 opposing claim of workman. 2nd party submits that Deptt. of Telecommunication have been changed and presently known as BSNL. That Union of India is not necessary party. 2nd Party No.2 is shown incorrectly. That Incharge of the office is District Divisional Engineer, Telecom. Parties are not correctly shown. 2nd party submits that Railway electrification Project work between Ratlam to Kota was carried by DTO Shamgarh during July 86 to Jan 87. It is not covered under ID Act. Said project was for less than 2 years period. Section 25-F,G of ID Act are not

applicable. As per ratio held by Apex Court in various cases, workman doesnot get status of regular employee. It is not necessary to assign reason for terminating services. It is denied that workman is entitled to be regularized in service. Any documents are not produced by workman. The representation submitted by workman were received. The demand of workman was unjustified. Workman had submitted petition before CAT, Jabalpur. It is submitted that applicant was allowed to pursue matter before ALC. The attendance chart produced by workman is not as per record. It is denied that workman continuously worked for 365 days. It is denied that workman signed register of payment of wages of casual workers. The availability of documents cannot be imagined. Workman had not completed 240 days service. Therefore he is not entitled to any benefits.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|--|
| (i) Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Bherulal, S/o Ratanlal w.e.f. September 1987 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

5. The terms of reference pertains to legality of termination of workman. 2nd party has pleaded that Telecom Department is presently known as BSNL. Term of reference further pertains to termination of service by Chief General Manager, Telecom and Director, Railway Electrification Project. Railway Electrification project is not impleaded as party. Workman filed affidavit of his evidence. In para 2 of his affidavit of evidence, workman says that he was not shown as employee. It was contented that he was engaged on contract basis. He could not be appointed on permanent post. That he was not engaged only for contract period. His affidavit is absolutely silent about period of his engagement, who had engaged him on work. In his cross-examination, workman claims ignorance whether work of alignment was to be completed within 2 years. He denies suggestion of 2nd party about his working days.

6. Management filed affidavit of witness Shri.Fareed Ahmed Kazi that the work of Railway Electrification between Ratlam to Kota was carried in 1986-87, workman was engaged as casual labour. As per evidence of management's witness, Exhibit M-3 is proved. Working

days of workman are less than 240 days. Management's witness was not cross-examined. His evidence remained unchallenged. I find no reason to discard evidence of management's witness, as workman has failed to prove that he worked more than 240 days, he is not entitled to protection of Section 25-F of ID Act, therefore I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Bherulal, S/o Ratanlal w.e.f. September 1987 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2098.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार, भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/38/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/10/2015 को प्राप्त हुआ था।

[सं. एल-40012/249/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th October, 2015

S.O. 2098.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/38/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom, BSNL and their workman, which was received by the Central Government on 27/10/2015.

[No.L-40012/249/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/38/2001

Shri Pirulal S/o Mangilal Gupta,
Vill Dhamnia Diwan,
Tehsil Garodh,
Mandsaur (MP)

...Workman

Versus

Chief General Manager,
Telecom, BSNL,
Hoshangabad Road, Bhopal

Telecom District Engineer,
Shajapur

...Management

AWARD

Passed on this 28th day of September, 2015

1. As per letter dated 18-1-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/249/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Pirulal S/o Shri Mangilal Gupta w.e.f. September 1988 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/4. Case of workman is that 2nd party no.2 engaged temporary employee in electrification Project, Ratlam Kota Division. Workman was engaged by Telecom Deptt. Services were terminated without notice. That employee completing more than 240 days cannot be terminated. Such employee gets eligibility for permanent appointment. Workman had requested reinstatement as per application dated 19-10-96. Any order was not passed on his application. Workman and others approached CAT. They were allowed time for approaching ALC, Bhopal for redressal of their grievance. Document about attendance was not submitted. 2nd party denied the documents. Workman submits that he worked more than 365 days. He acquired status of permanent employee. That he signed on the documents about payment of wages as temporary employee. Workman shows willingness to produce relevant documents in support of his claim. As per ratio held by Apex Court in various cases, workman has completed working days getting the status of regular employee. On such ground, workman prays for appropriate reliefs.

3. 2nd party filed Written Statement at Page 8/1 to 8/9 opposing claim of workman. 2nd party submits that depttt. of Telecommunication have been changed and presently known as BSNL. That Union of India is not necessary party. 2nd Party No.2 is shown incorrectly. That Incharge of the office is District Divisional Engineer, Telecom. Parties are not correctly shown. 2nd party submits that Railway electrification Project work between Ratlam to Kota was carried by DTO Shamgarh during July 86 to Jan 87. It is not covered under ID Act. Said project was for

less than 2 years period. Section 25-F,G of ID Act are not applicable. As per ratio held by Apex Court in various cases, workman does not get status of regular employee. It is not necessary to assign reason for terminating services. It is denied that workman is entitled to be regularized in service. Any documents are not produced by workman. The representation submitted by workman were received. The demand of workman was unjustified. Workman had submitted petition before CAT, Jabalpur. It is submitted that applicant was allowed to pursue matter before ALC. The attendance chart produced by workman is not as per record. It is denied that workman continuously worked for 365 days. It is denied that workman signed register of payment of wages of casual workers. The availability of documents cannot be imagined. Workman had not completed 240 days service. Therefore he is not entitled to any benefits.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Pirulal S/o Shri Mangilal Gupta w.e.f. September 1988 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

5. The terms of reference pertains to legality of termination of workman. 2nd party has pleaded that Telecom Department is presently known as BSNL. Term of reference further pertains to termination of service by Chief General Manager, Telecom and Director, Railway Electrification Project. Railway Electrification project is not impleaded as party. Workman filed affidavit of his evidence. In para 2 of his affidavit of evidence, workman says that he was not shown as employee. It was contented that he was engaged on contract basis. He could not be appointed on permanent post. That he was not engaged only for contract period. His affidavit is absolutely silent about period of his engagement, who had engaged him on work. Workman remained absent for his cross-examination. Evidence of workman was closed on 2-6-2010. Workman was absent for his cross-examination, therefore his evidence cannot be considered.

6. Management filed affidavit of witness Shri Farid Ahmed Kazi that the work of Railway Electrification between Ratlam to Kota was carried in 1986-87, workman was engaged as casual labour. Working days of workman

are shown in Para-6 of his affidavit. It comes more than 240 days during June 86 to May 87. In para 7 of his affidavit, management's witness says workman had not continuously worked more than 240 days. Affidavit of management's witness is rather inconsistent. From evidence of management's witness, document M-1 to M-3 are admitted in evidence. The working days of workman comes more than 240 days as per Exhibit M-3. However BSNL has been impleaded as party. Considering workman worked more than 240 days as per Exhibit M-3, termination of his service without notice is in violation of Section 25-F of ID Act. Therefore I record my finding in Point No.1 in Negative.

7. **Point No.2-** In view of my finding in Point No.1 services of workman are terminated in violation of Section 25-F of ID Act, evidence of management's witness shows that workman had hardly worked about 1 year on daily wages, reinstatement cannot be allowed. Compensation Rs. 30,000 would be reasonable. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Pirulal S/o Shri Mangilal Gupta w.e.f. September 1988 is not legal and proper.
- (2) 2nd party BSNL is directed to pay compensation Rs.30,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2099.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार, भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/40/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/10/2015 को प्राप्त हुआ था।

[सं. एल-40012/257/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th October, 2015

S.O. 2099.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/LC/R/40/2001) of the Central Government Industrial

Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom, BSNL and their workman, which was received by the Central Government on 27/10/2015.

[No.L-40012/257/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/40/2001

Shri Mohanlal,
S/o Puralal, Vill Sagoria,
Tehsil Garod,
Mandsour (MP)

...Workman

Versus

Chief General Manager,
Telecom, BSNL,
Hoshangabad Road, Bhopal

Telecom District engineer,
Shajapur

...Management

AWARD

Passed on this 28th day of September, 2015

1. As per letter dated 18-1-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/257/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, mandsaur in terminating the services of Shri Mohanlal, S/o Puralal w.e.f. September 1988 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/4. Case of workman is that 2nd party no.2 engaged temporary employee in electrification Project, Ratlam Kota Division. Workman was engaged by Telecom Deptt. Services were terminated without notice. That employee completing more than 240 days cannot be terminated. Such employee gets eligibility for permanent appointment. Workman had requested reinstatement as per application dated 19-10-96. Any order was not passed on his application. Workman and others approached CAT. They were allowed time for approaching ALC, Bhopal for redressal of their grievance. Document about attendance was not submitted. 2nd party denied the documents.

Workman submits that he worked more than 365 days. He acquired status of permanent employee. That he signed on the documents about payment of wages as temporary employee. Workman shows willingness to produce relevant documents in support of his claim. As per ratio held by Apex Court in various cases, workman has completed working days getting the status of regular employee. On such ground, workman prays for appropriate reliefs.

3. 2nd party filed Written Statement at Page 8/1 to 8/9 opposing claim of workman. 2nd party submits that Deptt. of Telecommunication have been changed and presently known as BSNL. That Union of India is not necessary party. 2nd Party No.2 is shown incorrectly. That Incharge of the office is District Divisional Engineer, Telecom. Parties are not correctly shown. 2nd party submits that Railway electrification Project work between Ratlam to Kota was carried by DTO Shamgarh during July 86 to Jan 87. It is not covered under ID Act. Said project was for less than 2 years period. Section 25-F,G of ID Act are not applicable. As per ratio held by Apex Court in various cases, workman doesnot get status of regular employee. It is not necessary to assign reason for terminating services. It is denied that workman is entitled to be regularized in service. Any documents are not produced by workman. The representation submitted by workman were received. The demand of workman was unjustified. Workman had submitted petition before CAT, Jabalpur. It is submitted that applicant was allowed to pursue matter before ALC. The attendance chart produced by workman is not as per record. It is denied that workman continuously worked for 365 days. It is denied that workman signed register of payment of wages of casual workers. The availability of documents cannot be imagined. Workman had not completed 240 days service. Therefore he is not entitled to any benefits.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, mandsaur in terminating the services of Shri Mohanlal, S/o Puralal w.e.f. September 1988 is justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

5. The terms of reference pertains to legality of termination of workman. 2nd party has pleaded that

Telecom Department is presently known as BSNL. Term of reference further pertains to termination of service by Chief General Manager, Telecom and Director, Railway Electrification Project. Railway Electrification project is not impleaded as party. Workman filed affidavit of his evidence. In para 2 of his affidavit of evidence, workman says that he was not shown as employee. It was contented that he was engaged on contract basis. He could not be appointed on permanent post. That he was not engaged only for contract period. His affidavit is absolutely silent about period of his engagement, who had engaged him on work. In his cross-examination, workman claims ignorance whether work of Ratlam division Project was for 2 years. To deny that in July 1986, he worked for 28 days, in December 1986, he worked for 25 days.

6. Management filed affidavit of witness Shri Farid Ahmed Kazi that the work of Railway Electrification between Ratlam to Kota was carried in 1986-87, workman was engaged as casual labour. As per evidence of management's witness, Exhibit M-3 is proved. Working days of workman are less than 240 days. Management's witness was not cross-examined. His evidence remained unchallenged. I find no reason to discard evidence of management's witness.. as workman has failed to prove that he worked more than 240 days, he is not entitled to protection of Section 25-F of ID Act, therefore I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Mohanlal, S/o Puralal w.e.f. September 1988 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2100.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार, भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/146/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/10/2015 को प्राप्त हुआ था।

[सं. एल-40012/248/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th October, 2015

S.O. 2100.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/

LC/R/146/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom, BSNL and their workman, which was received by the Central Government on 27/10/2015.

[No. L-40012/248/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/146/2000

Shri Balkishan S/o Motilal Sen,
Station Road,
Ambika Lodge, shyamgarh,
Mandsour(MP)

...Workman

Versus

Chief General Manager,
Telecom, BSNL,
Hoshangabad Road, Bhopal
Telecom District Engineer,
Shajapur

...Management

AWARD

Passed on this 28th day of September, 2015

1. As per letter dated 29-8-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-40012/248/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandsaur in terminating the services of Shri Balkishan S/o Shri Motilal Sen w.e.f. 3-2-97 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/4. Case of workman is that 2nd party no.2 engaged temporary employee in electrification Project, Ratlam Kota Division. Workman was engaged by Telecom Deptt. Services were terminated without notice. That employee completing more than 240 days cannot be terminated. Such employee gets eligibility for permanent appointment. Workman had requested reinstatement as per application dated 19-10-96. Any order was not passed on his application. Workman and others approached CAT. They were allowed time for approaching AIC, Bhopal for redressal of their grievance. Document about attendance was not submitted. 2nd party denied the documents.

Workman submits that he worked more than 365 days. He acquired status of permanent employee. That he signed on the documents about payment of wages as temporary employee. Workman shows willingness to produce relevant documents in support of his claim. As per ratio held by Apex Court in various cases, workman has completed working days getting the status of regular employee. On such ground, workman prays for appropriate reliefs.

3. 2nd party filed Written Statement at Page 8/1 to 8/9 opposing claim of workman. 2nd party submits that Deptt. of Telecommunication have been changed and presently known as BSNL. That Union of India is not necessary party. 2nd Party No.2 is shown incorrectly. That Incharge of the office is District Divisional Engineer, Telecom. Parties are not correctly shown. 2nd party submits that Railway electrification Project work between Ratlam to Kota was carried by DTO Shamgarh during July 86 to Jan 87. It is not covered under ID Act. Said project was for less than 2 years period. Section 25-F,G of ID Act are not applicable. As per ratio held by Apex Court in various cases, workman doesnot get status of regular employee. It is not necessary to assign reason for terminating services. It is denied that workman is entitled to be regularized in service. Any documents are not produced by workman. The representation submitted by workman were received. The demand of workman was unjustified. Workman had submitted petition before CAT, Jabalpur. It is submitted that applicant was allowed to pursue matter before ALC. The attendance chart produced by workman is not as per record. It is denied that workman continuously worked for 365 days. It is denied that workman signed register of payment of wages of casual workers. The availability of documents cannot be imagined. Workman had not completed 240 days service. Therefore he is not entitled to any benefits.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom and Director RE Project and TDM, mandasaur in terminating the services of Shri Balkishan S/o Shri Motilal Sen w.e.f. 3-2-97 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. The terms of reference pertains to legality of termination of workman. 2nd party has pleaded that

Telecom Department is presently known as BSNL. Term of reference further pertains to termination of service by Chief General Manager, Telecom and Director, Railway Electrification Project. Railway Electrification project is not impleaded as party. Workman filed affidavit of his evidence. In para 2 of his affidavit of evidence, workman says that he was not shown as employee. It was contented that he was engaged on contract basis. He could not be appointed on permanent post. That he was not engaged only for contract period. His affidavit is absolutely silent about period of his engagement, who had engaged him on work. In his cross-examination, workman claims ignorance whether work of alignment was to be completed within 2 years. He denies suggestion of 2nd party about his working days.

6. Management filed affidavit of witness Shri.Farid Ahmed Kazi that the work of Railway Electrification between Ratlam to Kota was carried in 1986-87, workman was engaged as casual labour. As per evidence of management's witness, Exhibit M-3 is proved. Working days of workman are less than 240 days. Management's witness was not cross-examined. His evidence remained unchallenged. I find no reason to discard evidence of management's witness.. as workman has failed to prove that he worked more than 240 days, he is not entitled to protection of Section 25-F of ID Act, therefore I record my finding in Point No.1 in Affirmative.

7. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom and Director RE Project and TDM, Mandasaur in terminating the services of Shri Balkishan S/o Shri Motilal Sen w.e.f. 3-2-97 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2101.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वाहन निर्माणी, जबलपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/36/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/10/2015 को प्राप्त हुआ था।

[सं. एल-14012/31/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th October, 2015

S.O. 2101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/

LC/R/36/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Vehicle Factory, Jabalpur and their workman, which was received by the Central Government on 27/10/2015.

[No. L-14012/31/98-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/36/99

Shri Manmohan Singh Talwar,
R/o Hathital Gurudwara,
Gorakhpur,
Jabalpur

...Workman

Versus

General Manager,
Vehicle Factory,
Jabalpur

...Management

AWARD

Passed on this 14th day of September, 2015

1. As per letter dated 21-12-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-14012/31/98-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Vehicle Factory, Jabalpur in terminating the services of Shri Manmohan Singh Talwar, T.No.22/7311 Mach B G.M.S. Section Plant No.2 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/5. Case of workman is that he had raised objection that General Manager, Vehicle factory is not appointing authority and as such is not competent to punish him. He also refers to judgment by CAT, Jabalpur in original application No. 377/90. His termination without showcause notice is not justified. That he was not given proper opportunity for his defence. Only appointing authority is competent to punish employee. That he was not provided documents by Enquiry Officer. The articles were not sealed at the time of seizure. That no evidence was adduced in enquiry on the point articles kept in locker by workman. Enquiry was conducted pertaining to attempt of theft against workman. However he was denied opportunity for defence. The orderly officer shown as witness was not examined in the enquiry. Workman submits

that the decision given by the Tribunal or Court in favour of employees all employees placed in similar situation should be given benefit. Workman refers to ratio held in various cases by Apex Court. He also submits that general manager has revoked termination of many employees involved in theft cases. He prays for revocation of his termination.

3. 2nd party filed Written Statement at Page 11/1 to 11/3 opposing claim of workman. 2nd party submits that Ist party workman committed gross misconduct – (i) attempting theft of government property, (ii) keeping government material unauthorisely in his locker, (iii) conduct unbecoming of the Government Servant. Chargesheet was issued under rule 14 CCS Rules 1965 on 15-4-87. Workman was suspended on 13-3-87. Workman denied charges calling reply to chargesheet. Enquiry was ordered against him. Enquiry was conducted following the procedure. Several notices were issued to workman. Enquiry was fixed on various dates shown in para-3 of the Written Statement. Workman did not attend Enquiry Proceedings. Enquiry Officer conducted exparte enquiry. Enquiry Officer had given final opportunity for his defence or submitting his brief on 18-8-88. Workman submitted his brief and admitted charges against him. Penalty of dismissal was imposed against workman. The appeal preferred by workman on 29-10-97 was rejected. The dispute has been referred. 2nd party reiterates that workman was allowed opportunity for his defence. He failed to avail opportunity as he remained absent in the Enquiry Proceedings. Management followed principles of natural justice. Considering gravity of misconduct, punishment of dismissal was imposed against him on 16-8-89.

4. Workman died during pendency. His LR's are brought on record. As per order dated 18-7-2014, enquiry conducted against workman is found legal.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

6. As stated above, enquiry conducted against workman is found legal. Point whether misconduct alleged

against workman are proved needs to be decided from evidence in Enquiry Proceedings. Management has produced record of enquiry at Exhibit M-1 to M-19. The statement of witnesses Dayaram Singh, Manmohan Singh. Management's witness Dayaram in his statement at Page 41 says during rigorous search of workman, he found 16 drills out of which 12 were of small size and 4 were of big size found under the belt of Manmohan Singh. After he found the material with workman, he informed Security Assistant. He identified workman Manmohan Singh T.No. 222. Materials recovered from workman were sealed in his presence. Witness Shri H.S.Khare in his statement at Page 42 says on 13-3-87, 6.40 hours, Security Assistant from Gate No.3 telephoned him. On reaching at Gate No.3, he saw Manmohan Singh security Assistant and Srivastava. He came to know that drills were recovered from workman at the gate during his rigorous search. His statement were recorded in his presence. Manmohan Singh admitted that these drills were recovered from his possession. Management's Witness Narmada Prasad in his statement at Page 43 says that he received information through informers that Manmohan Singh was intending to take out factory materials unauthorisely. He informed Security Officer. He came to Gate No.3. Manmohan Singh was caught and his search was taken. Workman was found unauthorisely taking Government material. Management's witness Srivastava in his statement at page 44 corroborates their evidence that total 16 drills of various size were found in possession of workman. Management's witness Shri Shankarlal in his evidence says on 14-3-87, Security officer directed him to go and search locker of Manmohan Singh. He had opened locker of Manmohan Singh. The unauthorised material recovered from locker was listed in his presence by GMS Foreman. Management's witness T.No. 314 says on 14-3-87, locker of Manmohan Singh was searched using duplicate key. Unauthorised items were found in the drawer of workman. Enquiry officer submitted his report at Page 48 holding charges against workman proved. Workman had submitted his written submissions at page 50- Exhibit M-21. Workman was dismissed from service.

7. The arguments advanced by Advocate P.Yadav that enquiry report was not send to appointing authority. The seized articles were not produced, charges are not proved. Workman did not participate in Enquiry proceedings. Evidence of all management's witnesses remained unchallenged. In his statement also, workman has not pleaded on those points. As evidence of management's witnesses remained unchallenged, there is no reason to disbelieve evidence of management's witnesses that 16 drills were found on his personal search and unauthorised material found from his locker. The findings of Enquiry Officer is supported by evidence of management's

witnesses therefore I record my finding in Point No.1 in Affirmative.

8. **Point No.2-** The charges/ misconduct alleged against workman are proved as per finding in point No.1. Learned counsel for workman Shri P.Yadav submits that order of punishment was not issued by Competent authority. The pleadings and evidence of workman are not disclosing who was his Appointing Authority and the authority issuing order of punishment was not competent. In absence of such pleading and evidence, the argument advanced by learned counsel for deceased workman cannot be accepted. On the point of quantum of punishment, learned counsel for workman Shri P.Yadav relies on ratio held in

Case between B.C.Chaturvedi versus Union of India and others reported in 1995-6-SCC-750. Their Lordship dealing with scope of judicial review held the Court Tribunal cannot interfere with the findings or fact based on evidence and substitute its independent findings.

In case between Jaibhagwan versus Commissioner of Police reported on 2013-11-SCC-187. Their Lordship dealing with scope of judicial review and discretionary power vested held the General rule of non-interference unless punishment imposed found to be outrageously disproportionate to gravity of misconduct.

In present case, misconduct of workman carrying 16 drills of different size is established from evidence of management's witness. Certainly it is an attempt of committed theft.

9. Learned counsel for management Shri P.Shankaran relies on ratio held in

Case of 2000(7) SCC 517. Their Lordship held where the charge of misappropriation of goods was established in the domestic enquiry and the delinquent employee was dismissed, the Labour Court erred in directing his reinstatement with 25 % backwages. Their Lordship held discretion of employer exercised in imposing penalty after misconduct proved in domestic enquiry.

In case between Divisional Controller, NEKRTC vrs H.Amaresh reported in 2006(6)SCC 187. Their Lordship considering misappropriation of a small amount of SRTC funds of Rs. 360.95 by conductor held a grave act of misconduct which resulted in financial loss to RTC. The charge was proved in domestic enquiry. The punishment of dismissal by Disciplinary Authority did not call for interference by Labour Court or High Court.

In case between workmen of Balmadies Estates versus management of Balmadies Estate reported in 2008LAB.I.C.1685. Their Lordship dealing with Section 11-A of ID Act considering delinquent charge of theft witnesses deposing that delinquent has made confession witness not cross-examined on such matter. No plea raised that delinquent has made confession under duress. The interference by labour Court with finding of Inquiry Officer that delinquent has misconducted is improper.

In present case, workman did not participate in enquiry, failed to cross-examine witnesses of management. The evidence of management's witnesses is consistent that 16 drills were recovered on personal search of workman. interference in punishment of dismissal is not justified. For above reasons, I record my finding in Point No.2 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of Vehicle Factory, Jabalpur in terminating the services of Shri Manmohan Singh Talwar, T.No.22/7311 Mach B G.M.S.Section Plant No.2 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 28 अक्टूबर, 2015

का.आ. 2102.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुध निर्माणी, इटारसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/142/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/10/2015 को प्राप्त हुआ था।

[सं. एल-14012/25/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th October, 2015

S.O. 2102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/LC/R/142/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ordnance Factory, Itarsi and their workman, which was received by the Central Government on 27/10/2015.

[No. L-14012/25/2001-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/142/2001

Shri Ramesh Prasad,
Adarsh Nagar,
Near EWS-73,
Housing Board Colony,
Hoshangabad

...Workman

Versus

General Manager,
Ordnance Factory,
Itarsi

...Management

AWARD

Passed on this 7th day of September, 2015

1. As per letter dated 9-7-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-14012/25/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Ordnance Factory, Itarsi in terminating the services of Shri Ramesh Prasad w.e.f. 15-3-95 is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/7. Case of Ist party is that he was assigned temporary duty for handing over the explosives loaded in Ordnance Factory, Itarsi vehicle No. MP05-A-881 for export at Embarkation Headquarters Bombay on 8-2-92. Rajendra Prasad Patel accompanied him. On 8-2-92, they left for Mumbai. He reached Mumbai on 10-2-92 and unloaded the explosives at Karanja Port on 11-2-92. They reached about 22.30 hours on the same day. Workman reached Ambarnath on 14-2-92 for return journey following the route via Indore and reported at Ordnance Factory, Itarsi on 19-2-92 at about 16.35 hours. The was suspended on 12-3-92. Chargesheet was issued to him on 9-4-92. Enquiry was initiated against him. As per order dated 20-7-93, he was removed from service. Workman preferred appeal to authority challenging order of his removal. Chairman of Ordnance Factory as per order dated 14-11-94 quashed penalty of removal from service with dissenting note. The order of Appellate Authority was served on him alongwith letter dated 18-1-95. The order of his reinstatement was passed by Disciplinary Authority on 18-1-95. Workman submitted his written defence on 23-2-95. As per order dated 15-3-95, workman was removed from service.

3. Ist party workman submits that charges against him were – (i) Pilferage of diesel from Government Vehicle, (ii) Misuse of Government vehicle for private riding, (iii) carrying unauthorised person in explosive van, (iv) following unauthorized and longer route. Workman submits that charges were baseless. Enquiry conducted against him was empty formality. The charges were not proved against him. He was punished only for one charge. Said charge was not proved. That Charge No.1 about misuse of Government Vehicle for private riding was proved, Charge No.3 following unauthorized and longer route were not proved from Enquiry Proceedings. That Truck No. MP-05-A-880 which was also detailed for Bombay covered 1857 Kms distance. The said truck had travelled to Karanja Port. Workman reiterates that any of the charges have not proved against him. 11 days journey covering 1896 Kms by vehicle No MP-050A-0880 receiving goods received from Mamaji goods transport is alleged. Said charge is not proved. Punishment of removal from service is based on fabricated evidence. The workman prays for setting aside order of dismissal. Workman prays for reinstatement with consequential benefits.

4. 2nd party filed Written Statement at page 6/1 to 6/10 opposing claim of the workman. 2nd party reiterates that enquiry is conducted against workman following the rules and prescribed provisions. No irregularity is committed. Disciplinary Authority considered all documents pertaining to the case while imposing punishment. The appeal was dismissed by reasoned order. Workman along with Shri Rajendra Prasad was detailed on temporary duty on 8-2-92. That workman had carried another employee of Factory unauthorisely in said explosive van. The van reached Mumbai via Harda Khandwa route on 10-2-92 at 17.00 hours. The explosives were unloaded at Karanja Port on 11-2-92. On same day, the van reached Ambarnath Ordnance Factory at 22.30 hours. The van returned Ordnance Factory on 19-2-92 at 16.35 hours late by 3 days of normal time. That fitter Rajendra Prasad reported that workman accepted Private goods for transport in explosive van of M/S Mamaji Goods. The goods were delivered at Dooars Transport Limited, Indore on 16-2-92. That 75 litre diesel was misappropriated by workman giving details of the diesel in Para 3.5 of the Written Statement. Workman was found guilty. The order of his suspension was issued on 10-2-92. Enquiry was conducted against workman for gross misconduct for the charge of pilferage of misuse of Government Vehicle, carrying unauthorized person in explosive van. Enquiry Officer reported that Charge No.2,3,4,5 were found proved. The Enquiry Report was forwarded to workman as per letter dated 15-6-93. Workman submitted his representation on 30-6-93 challenging finding of Enquiry Officer. The Disciplinary Authority considering report of Enquiry and representation of workman recorded his own findings on 20-7-93 holding that the charge of pilferage of diesel found

established. Copy of finding was recorded on 20-7-93. Workman was held guilty and penalty of removal from service was imposed against him on 27-6-93 itself.

5. Workman challenged order of his removal filing appeal. The Appellate Authority as per order dated 14-11-94 found that dissenting note of Disciplinary Authority was not provided to workman before imposing penalty. The authority was given liberty to proceed from the stage of giving copy of dissenting finding. Workman was reinstated on 20-7-93. It is reiterated that the Disciplinary Authority received representation of workman on the point of dissenting finding. After considering the evidence, punishment of removal was imposed against workman on 15-3-95. The appeal preferred by workman was found without substance and rejected on 22-9-99. 2nd party submits that for proved misconduct, workman was removed from service. Action of management is proper and legal.

6. Workman submitted rejoinder at Page 7/1 to 7/6 reiterating its contentions in statement of claim.

7. Recording evidence of parties on preliminary issue as per order dated 16-5-13, enquiry conducted against workman was found illegal. 2nd party management was permitted to prove misconduct by adducing evidence.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	Only charge No.3 of carrying unauthorized person in explosive van is proved.
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(iii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

9. Enquiry conducted against workman is found illegal. Management was permitted to prove charges adducing evidence. The documents of Enquiry Proceedings are produced at Exhibit M-1 to M-10. As enquiry is vitiated, evidence in Enquiry Proceedings cannot be considered as proof of the charges alleged against workman.

10. Management filed affidavit of witness Shri Rajendra Patel. In his affidavit, he says that on 8-2-92, he was deputed with workman in Vehicle No. MP-5A-881 loaded with explosive. He left at 17.50 hours for Mumbai. One C.P.Mourya was picked up by workman for travelling with

them to Mumbai. He was allowed to travel with them. His evidence is also devoted about 75 litres diesel taken in the vehicle. Workman taken 5 litres diesel filling in the tank. On 10-2-92, they reached Mumbai at 5 PM. On 11-2-92 morning, they started return journey to Karanja Port the vehicle was airlocked. Workman brought diesel around 6 PM they started return and reached Ambarnath on the way the vehicle was again airlocked. He narrated the details of their journey. That on 13-2-92 at 16.30 hours, they reached Nasik. Workman permitted transporter to load 8 ton consisting of metal in the vehicle. The above goods were unloaded at Indore. On 8-2-92 at 14 hours, they reached Hoshangabad, his hometown. His further evidence is devoted on the point that he accompanied Neeraj Kumar Security Supervisor for getting documents from Mamaji goods Transport and Dooars Transport, Nasik. The documents were not supplied by either of the transport on their request.

11. Management's witness in his cross-examination says the Ordnance Factory is located at Itarsi. Workman is from Hoshangabad, distance between Itarsi and Hoshangabad is 18 Kms. He claims ignorance about chargesheet issued to workman and enquiry conducted against workman. He was witness in Enquiry Proceedings but he did not recollect name of Enquiry Officer. He did not recollect his evidence in enquiry. He cannot read English. He did not recollect whether his statement was recorded in Hindi or English but Officer recorded his statement. That he had once gone for duty with workman. He claims ignorance whether workman was terminated. In his further cross-examination, management's witness says once he had gone to Mumbai on 8-2-92. He did not remember the year of leaving school. He was unable to tell date or month of marriage. That written order was not given to him for going with workman. That he was sent with Ramesh Helper. He had gone in explosive van. He remember its number. He did not remember time leaving the factory. His Advocate has drafted his affidavit. He did not remember what time was written in his affidavit leaving factory on 8-2-92. He knows Shri C.P.Mourya since 1982. He does not know whether Shri C.P.Mourya was given order for going to Mumbai. He has not stated in his affidavit about order given to Shri C.P.Mourya for going to Mumbai. Distance between Itarsi to Mumbai is 850 kms. The average consumption explosive van was about 8-9 kms. He does not know distance between Igatpuri and Mumbai. After he left factory on 8-2-92, he was unable to tell the time he reached Igatpuri.

12. In his cross-examination, management's witness did not remember where they had halted at Igatpuri. He did not see workman taking out diesel and selling it. In his further cross, he did not recollect time of leaving Mumbai. He did not know how much diesel was purchased by Ramesh Prasad. The van halted at 2-3 places on way to Mumbai. They reached Karanja Port. He did not remember

time they reached Ambarnath on 10-2-92. He did not remember time of returning back to Indrapuri. He did not hear conversation between workman and transporter. He was unable to tell distance of their van and the godown. That he was sitting in the van. He did not remember C.P.Mourya had gone. He may have gone in the city. Van halted for 7-8 hours at godown. He denies that any goods were not loaded in the van. He was unable to tell whether goods were loose or packed. He objected loading of Private goods in the van. Above facts are written in the affidavit. However the affidavit is silent about his objection in loading. He denies suggestion that goods were not loaded or unloaded in van by Shri Ramesh Prasad.

13. Management has also filed affidavit of witness Shri C.P.Mourya. In his affidavit, he says he was working as Civil Driver Grade I since 1983. In February 1992, he was on duty. Workman Ramesh Prasad told him that explosive van was going to Mumbai, whether he was willing to accommodate with him. He travelled in the explosive van along with workman. The explosive van No. MP-05-A-881. They had gone to Mumbai and other places. They returned back to Hoshangabad by the same van. In his cross-examination, above management's witness says that he was granted promotion after 1992. Order was not given to him for accompanying workman to Mumbai. He was travelling in the van from Itarsi. He was unable to tell how much diesel was filled in the van. The average of explosive van was 3-4 kms whereas witness Rajendra in his cross-examination says average of explosive van was 8-9 kms per litre. The evidence is not consistent. In his further cross, above witness says vehicle was airlocked 2-3 times. The Helper had repaired it. He admits that the earlock in diesel would be waste material. While returning from Mumbai to Itarsi, the vehicle was empty. For filling diesel, van was stopped at Ambarnath. Thereafter they stopped at Nasik for about 2 hours. He returned from Nasik to Hoshangabad in same van. He had not written anything in his affidavit about loading goods and unloading it. The evidence of both the witnesses of management about consumption of diesel, its unauthorized use of the vehicle is not cogent rather the witness Shri C.P.Mourya had not supported any other charges except he was travelling in explosive along with workman and witness MW-1 Rajendra Prasad. The evidence of Rajendra Prasad about loading, unloading is not cogent. The evidence of both witnesses is committed about they travelled in explosive van. Witness No.2 Mourya is not supporting charges about loading unloading private goods in explosive van.

14. The evidence of witness No.3 Dhiraj kumar is on the point of visiting Mama Garage Nasik along with Rajendra Patel for verifying documents. The documents were supplied to him. He submitted Exhibit M-1 along with documents. As witness was not author of the documents, proprietor of Mama Transport, Dooars Transport was not examined. The documents were not admitted in evidence.

In his cross-examination Shri Dheeraj Kumar says he was not aware that the duties of workman were changed. He was unable to tell in 1992 how many employees were working in Ordnance Factory, Itarsi, how many Drivers were working in the Factory. If whole evidence MW-1 to MW-3 is carefully appreciated, the evidence about filling diesel in the explosive van is not cogent. The charge of Pilferage of diesel from Government Vehicle is not established. The unauthorized use of Government Vehicle carrying private goods cannot be proved. During course of argument, my attention was drawn to the bill of Mamaji Goods Transport shows van No. MP-05-A-0880 was different than the explosive van driven by workman to Mumbai. The evidence of all witnesses is consistent about the C.P. Mourya MW-2 was travelling in the explosive van without any order of the management. The evidence proves only Charge No.3 against workman. Other charges about Pilferage of diesel from Government Vehicle, Misuse of Government vehicle for private riding, following unauthorized and longer route could not be proved. The evidence is clear that management had not given order to the workman for going to Mumbai by longer route. Accordingly I record my finding in Point No.1.

15. **Point No.2-** In view of my finding in Point No.1, the question remains for consideration is whether punishment of dismissal imposed against workman is justified. On the point, Learned counsel for 2nd party Shri P. Shankaran relies on ratio held in

Case of Bhagwan Singh Rawat versus State of MP and others reported in 2003(4) M.P.H.T.309. Their Lordship held until and unless petitioner is found guilty of demanding illegal gratification and charge is established. Petitioner could not be fastened with the penalty of removal without making any enquiry into charge of demand of illegal gratification.

Ratio cannot be applied to case at hand as facts are not comparable. From evidence only charge No.3 against workman is proved.

In case of Nepal Singh versus State of UP and others reported in AIR 1985-SC-84. Their Lordship dealing with Article 311(2) of constitution held order based on mere allegations and on unspecific and vague grounds, order liable to be quashed.

The facts of present case are different. Charge No.3 pertaining to carrying unauthorized person in explosive van is proved. Other charges of serious gravity are not proved. The ratio cannot be applied to case at hand.

In case of workmen of Balmadies Estates versus Management of Balmadies Estates and others reported in 2008(4) SCC 517. Their Lordship held in domestic enquiry assessment of evidence is not required to be made by applying the same yardstick as a civil court would do when a lis is brought it. Evidence Act 1872 is not applicable to the proceeding

in a domestic enquiry. Their Lordship further held that the evidence was not properly appreciated by Enquiry Officer and finding of guilt was based on very slender evidence. It was held on facts, findings of Labour Court were perverse and can be termed to be based on misconception of law.

In present case from evidence discussed with Point No.1, only Charge No.3 is brought against workman, the ratio cannot be beneficially applied.

In case of General Manager (Operation) State Bank of India and others versus P.Periyasamy reported in 2015(3) SCC-101. Their Lordship dealing with Administrative Orders. Decisions. Executive Instructions held that decision or executive order is properly and validly made. The evidence required to reverse the initial burden.

The ratio held in above case doesnot cover controversy between parties. Therefore the ratio cannot be beneficially applied to case at hand.

In case of General Secretary, South Indian Cashew Factories Workers Union versus Managing Director, Kerala State Cashew Development Corporation Ltd. reported in AIR-2006-SCC-2208. Their Lordship dealing with Section 11-A of ID Act and power of Labour Court. Their Lordship held no allegations of victimization or malafides or unfair labour practice. There is clear finding that findings are not perverse and principles of natural justice were complied with while conducting enquiry. Labour Court has no power to interfere with punishment.

In present case, enquiry conducted against workman is found illegal. Management is given opportunity to prove misconduct by adducing evidence. The evidence is adduced by parties. Only Charge No.3 is proved against workman. other charges of serious nature like pilferage of Diesel from Government Vehicle amounting theft of Government Property, misuse of Government vehicle for private riding, following unauthorized and longer route are not proved from evidence in record. The ratio cannot be applied to case at hand.

16. To conclude, only charge No.3 carrying unauthorized person in explosive van is proved. At the time of argument, it was also submitted that punishment of withholding increment was also imposed against Shri C.P.Mourya MW-2. Learned counsel Shri P.Shankaran submit that punishment of dismissal imposed against workman should not be interfered by the Tribunal. The Charge No.1,2,4 are more serious in nature are not proved against workman. Charge No.3 of carrying unauthorized person in explosive van is proved. For the proved charge, in my considered view, punishment of dismissal against workman would not be proportionate to the guilt proved. Workman was working as Driver with 2nd party, it would be appropriate

to modify the punishment of dismissal to compulsory retirement. Accordingly I record my finding in Point No.2.

17. In the result, award is passed as under:-

- (1) The action of the management of Ordnance Factory, Itarsi in terminating the services of Shri Ramesh Prasad w.e.f. 15-3-95 is not proper and valid.
- (2) Dismissal of workman is modified to compulsory retirement. Parties to bear their respective costs.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2103.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आर्यवर्त ग्रामीन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 56/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12011/20/2008-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 56/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Aryavart Gramin Bank and their workman, which was received by the Central Government on 29/10/2015.

[No. L-12011/20/2008-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT:

RAKESH KUMAR, Presiding Officer

I.D. No. 56/2008

Ref. No. L-12011/20/2008-IR(B-I) dated 11.12.2008

BETWEEN

President/Sanyojak
Aryavart Gramin Bank Officer/Karmchari Parishad
555 Kha/64 Ka, Subhash Nagar, PO Manas Nagar,
Lucknow

AND

1. The General Manager
Aryavart Gramin Bank
HO: A-2/46, Vijay Khand, Gomti Nagar,
Lucknow

AWARD

1. By order No. L-12011/20/2008-IR(B-I) dated 11.12.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between President/Sanyojak, Aryavart Gramin Bank Officer/Karmachari Parishad, Lucknow and the General Manager, Aryavart Gramin Bank, Vijay Khand, Gomti Nagar, Lucknow for adjudication.

2. The reference under adjudication is:

“Whether the Action of Aryavart Gramin Bank in With Drawing of FPA/FPP Benefits from the Salary of the Erstwhile Employees of Awadh Gramin Bank by Means of Letter dated 17-09-2007, is just, Fair and Legal ? If not, to what Relief the Workmen Concerned are Entitled?”

3. As per the claim statement, the applicant in brief, has stated that there were three Regional Rural Bank's viz Avadh Gramin Bank, Barabanki Gramin Bank and Farrukhabad Gramin Bank. The sponsor was Bank of India, by notification dated 03.10.2006 all the three rural banks were amalgamated into single namely Aryavart Gramin Bank. The applicant has further stated that it was provided in the aforesaid notification that the services of all erstwhile employees of RRB's will get the same remuneration and on the same terms and conditions which they were getting immediately before the effective date of amalgamation, employees of Avadh Gramin Bank were transferred in Aryavart Gramin bank from 03.10.2006, they were getting FPA & FPP from 01.04.2001 in accordance with the circular dated 23.04.2001, the aforesaid FPA/FPP has been translated into service conditions of the officers/employees of the erstwhile Gramin Bank Govt. of India in exercise of powers conferred under Section 17(1) of Regional Rural Bank Act, 1976, the Aryavart Gramin bank has drawn the benefit of FPA/FPP by means of impugned circular dated 17.09.2007 unilaterally, arbitrarily and without jurisdiction since the benefit given by Govt. India can not be withdrawn by the opposite party bank, therefore, the erstwhile employees/officers of the bank were also entitled for arrears of FPA/FPP as they were getting before impugned circular along with arrears and interest. The workman has prayed to set aside the impugned circular 2/87 dated 17.09.2007 with the direction to the opposite party bank to restore FPA/FPP to the employees/officers along with arrears and interest @ 18% per annum.

4. Along with claim statement notification dated 03.10.2006 and certain other documents have also been filed.

5. The opposite party management while filing the written statement M-7 has denied the main allegation of the claim statement, and it has been asserted therein that the applicant Parishad is not a registered union under trade Union Act, and, as such, has no legal right to espouse the cause of the opposite party under the I.D. Act, President of the union has no legal locus-standi to represent the unregistered union in the proceedings, all the proceedings right from conciliation stage and consequent reference are vitiated.

6. It has also been stated in the written statement that prayer as made in para 11(1) of claim statement is beyond the scope of reference as the reference order relates to both the staff and officers, who were employees of Avadh Gramin Bank, whereas prayer has been made in respect of all the employees of amalgamated opposite party bank. In this way, claim statement is camouflaged and defective. Further the reference order also relates to officers of amalgamated bank who admittedly do not fall under the definition of "workman" as defined under Section 2(s) of the I.D. Act, and, as such, it is defective and reference is liable to be rejected on this ground alone. There were three gramin banks, namely Avadh Gramin Bank, Barabanki Gramin Bank and Farrukhabad Gramin Bank. The Central Government, Ministry of Finance by notification dated 03.10.2006 had amalgamated the aforesaid three gramin banks and had carved out the opposite party Aryavart Gramin Bank.

7. The management has stated that vide order dated 11.04.2001, Govt. of India has directed all the Gramin banks to revised pay and DA of the employees/officers of RRBs in the light of the decision of the Hon'ble Supreme Court in Civil Appeal No. 2218/99 dated 31.01.2001, the terms of the directions have been given in para 16 of the written statement. It will be evident from a perusal of above direction that only Basic Pay and Dearness Allowance was to be revised in terms of decision of Apex Court and 6th and 7th Bipartite Settlements. Further House Rent Allowance and City Compensatory Allowance was to be paid at par with that of employees of Bank of India. As regards other allowance, the same was to be negotiated with the RRBs. It will be relevant to note that this direction of Govt. of India was silent about other allowances other than Pay, D.A., C.C.A., H.R.A., which were already being paid to their employees from before hand. As this direction was silent on this point, the only inference will be that these existing allowances will be continued to be paid to employees. As regards new allowances, they were to be payable after negotiations. Allowances by way of Fixed Personal Allowance and Fixed Personal Pay WERE NOT EXISTING at the time of issuance of direction of the Govt. of India. Hence, this was not payable till it was negotiated. It was neither the case of Union nor that of employers that allowance by way of Fixed Personal Allowance and Fixed Personal Pay was negotiated in terms of direction of Govt.

of India when negotiations between the parties were held about grant of other allowances. In its absence on its very face the employees of Erstwhile Avadh Gramin Bank were not legally entitled for this benefit of Fixed Personal Allowance and Fixed Personal Pay.

8. It has further been stated in written statement while adopting the direction of Govt. of India, erstwhile Avadh Gramin Bank by circular dated 23.04.2001 has given advice to the Area Manager/Manager of all the branches accordingly.

9. The opposite party has also emphasized that while giving above direction, Avadh Gramin Bank inadvertently did not clarify the difference between the existing other allowances and new other allowances, which were to be paid after negotiations. Consequently in the grab of "Other Allowances" New Additional Allowance by way of Fixed Personal Allowance and Fixed Personal Pay was granted, which on its very face was erroneous as it was beyond the direction of Govt. of India. Further fixed personal pay and fixed personal allowance is not payable to employees of Regional Rural Banks as terms of 6th Bipartite Settlement and 7th Bipartite Settlement with regard to these items, are not applicable to Regional Rural Banks. It is settled law that any order, which is passed under mistaken belief and without jurisdiction can be corrected at any stage. As after amalgamation of above three Banks, it was found that employees of erstwhile Avadh Gramin Bank were getting fixed personal allowance and Fixed Personal Pay whereas the employees of the other two erstwhile banks were not getting so, there was disparity causing resentment among employees inter-se. It was in order to do justice between the employees that the mistake of erstwhile Avadh Gramin Bank was corrected by the opposite party bank by way of passing resolution dated 07.09.2007 withdrawing the above benefit to the employees of erstwhile Avadh Gramin Bank. In this regard, circular dated 17.09.2007 was issued. It is averred that opposite party bank is the successor in interest of the Avadh Gramin Bank, it has every right to correct the mistake of its predecessor Bank in terms of amalgamation order.

10. The opposite party has stated that Fixed Personal Allowance and Fixed Personal Pay was not admissible to employees of Regional Rural Banks, it was so apparent that other Gramin banks had not given this benefit to its employees after issuance of above direction of Govt. of India. Grant of fixed personal allowance and fixed personal pay was not condition of service as it does not emerge out from the appointment letter and rules of the erstwhile bank. The opposite party had shown enough magnanimity by not ordering for recovery of amount of fixed personal allowance and fixed personal pay from the employees of the erstwhile Avadh Gramin Bank inspite of the fact that such payment was made under mistake. Some employees of the erstwhile Avadh Gramin bank have filed Writ Petition No. 4184/2008, Akhilesh Kumar Misra and others Vs Union

of India and others, and writ petition No. 4185/2008 before Hon'ble High Court of Judicature at Allahabad, Lucknow Bench Lucknow, Shravan Kumar Gupta versus Union of India. It is true that provision of Section 10 CPC do not apply to Labour Courts, still its principles are applicable. In view of this and in view of pendency of the above mentioned writ petitions the proceedings of the above present reference are liable to be stayed as the subject matter of two litigation is identical and further there is identify of parties as well.

11. The management with the above pleadings has prayed to reject the reference.

12. The applicant has filed rejoinder W-8 denying the allegations of the written statement while reiterating strongly pleas taken in the claim statement.

13. The management has filed certain documents along with list M-8.

14. The management has relied upon the following principle laid down by the Hon'ble Court:

1. Arun Kumar Kashyap Vs State of Jharkhand 2009, Lab IC (NOC) 107 (JHAR.) alongwith copy of full judgement.
2. Satyavir Singh & others Vs Union of India 1986 Supreme Court cases (L&S) 1.
3. Kandla Court Trust and another vs K.R. Chauhan and another, 1988 Lab IC 3085.
4. Mahendra Badal and others Vs Union of India, Writ Petition No. 9040/2006 (CMIC), Patna High Court.

15. Despite, sufficient opportunity given to the workman, none appeared on his behalf to advance the arguments. Therefore, the arguments advanced on behalf of the management, were heard at length. The record available before this court has been scanned thoroughly.

16. The Employees Union has come up with the case that as many as three rural banks were amalgamated, including Avadh Gramin Bank, vide notification dated 03.10.2006; wherein it was provided in the notification that all the employees of the banks, getting amalgamated, shall continue to enjoy same service conditions and shall get the same remuneration as they were getting before amalgamation. It has been alleged by the Union that the management of Aryavart Gramin Bank has arbitrarily and illegally withdrawn the benefit of FPA/FPP by the means of impugned circular No. 2/87 dated 17.09.2007.

17. Per contra, the management of the Bank has come up with a case that the Government of India vide order dated 11.04.2001, directed all the Gramin Banks to revise pay and Dearness Allowance of the employees/officers of RRBs in light of directions of Hon'ble Apex Court in Civil Appeal No. 2218/99 dated 31.01.2001, therefore, only Basic

Pay and Dearness Allowance was to be revised in view of decision of Hon'ble Apex Court and 6th and 7th Bipartite Settlement. However, House Rent Allowance and City Compensatory Allowance was to be paid as par with the employees of the Bank of India; moreover, the other allowances were to be negotiated with the RRBs. It is the case of the management that since the directions of the Government of India was silent over the allowances, other than Basic Pay, DA, CCA and HRA, which were already being paid to the employees, therefore, only these allowances were continued to be paid. As regards new allowances, they were payable after negotiations and the allowances viz. Fixed Personal Allowance and Fixed Personal Pay were not part of the directions of Government of India; hence not payable without negotiations. The management has very specifically pleaded that while issuing circular dated 23.04.2001, the erstwhile Avadh Gramin Bank, inadvertently, did not clarify the difference between the existing allowance and other new allowances, like FPA/FPP, which were payable after negotiations; and this led to generation of new additional allowances viz. FPA/FPP, which was not only erroneous but also beyond the purview of the directions of the Government of India vide order dated 11.04.2001. On amalgamation it was found that the employees of the Erstwhile Avadh Gramin Bank were getting FPA/FPP whereas the other amalgamated bank employee were not getting the same, therefore, in order to maintain equality in the pay and allowances of the amalgamated bank employees, a resolution dated 07.09.2007 was passed; whereby the benefit of FPA/FPP was withdrawn vide circular dated 17.09.2007.

18. I have given my thoughtful consideration to the rival pleading of the parties and scanned entire evidence available of record and law relied upon by the opposite party.

19. From respective pleadings of the parties it emerges out that Government of India, Ministry of Finance in accordance with the decision dated 31.1.2001 of Hon'ble Apex Court in Civil Appeal No. 2218/1999, determined the pay scales of employees of Regional Rural Banks vide circular dated 11.04.2001. The salient features of the said circular dated 11.04.2001 are quoted as under:

- “(i) The new basic pay and dearness allowance of each RRB employee as on 01.04.2000 would be determined by notionally granting, the pay scales of RRB employees would become equal to that of their counterparts in commercial banks.
- (ii)
- (iii)
- (iv) The House Rent Allowance (HRA) and City Compensatory Allowance (CCA) would be payable at the same rate as applicable to comparable employees in the sponsor banks

and would be given prospective effect i.e. date of issue of these orders as is done in commercial Banks.

- (v) As far as other allowances are concerned, individual sponsor banks shall negotiate the same with the respective RRB. The revised allowances shall be paid w.e.f. 1.4.2000. The ceiling on the payment shall, however, be as per the formula stated in (iii) above.

The RRBs may issue a comprehensive order based on the above orders indicating the revised pay scales in respect of each category of employees after getting approval of their Board of Directors.”

Thereafter, in pursuance to above directives the erstwhile Awadh Gamin Bank issued circular No. 25/08 dated 23.04.2001 regarding revision of salary. A few clauses of the same are quoted hereunder:

“(iii) As on 01-04-2000, the pay scales of the RRBs Employees would become equal to that of their counterparts in Commercial Banks.

iv) The House Rent Allowance and City Compensatory Allowance will be paid at the same rates applicable to Bank of India Employees, from the date of the issue of the Govt. Order i.e. from 11th April, 2001.

v) As far as other allowances are concerned, Sponsor Bank shall negotiate the same with our Bank and the same shall be paid w.e.f. 01.04.2000 for which separate circulars shall be made.

2. The Board of Directors on 132nd Board Meeting held on 23-04-2001 has adopted the G.O.I. orders conveyed in Order No. F. No. 7(6)/96-RRB dated 11th April, 2001 issued under Proviso 2 (I) of section 17(1) of Regional Rural Bank Act, 1976 and approved the current payment of revised salary w.e.f. 01.-04-2001.

3. Accordingly, you are advised to pay the revised salary i.e. basic & D.A. w.e.f. 01.-04-2001 and House Rent Allowance & City Compensatory Allowance w.e.f. 01-04-2001 and other allowances at old rates.”

Thus, from perusal of above two circulars it becomes crystal clear that the Government of India, in view of directions issued by Hon'ble Apex Court, formulated a guideline dated 11.04.2001 in order to bring uniformity to the pay structure of the RRBs at par with other banks and accordingly it directed for pay revision which included Basic pay, Dearness Allowance, HRA and CCA only and for other allowances it was provided that the Sponsor Bank shall negotiate the same with respective RRB; also while issuing the circular dated 23.04.2001, the erstwhile

Awadh Gramin Bank in para 1(v) mentioned that the other allowances shall; be paid after negotiation with the Sponsor Bank. However, from the records available it is apparent that the allowances viz. FPA/FPP were extended without any negotiations with the Sponsor Bank. There is no iota of evidence on record that the Sponsor Bank ever entered into any negotiation with erstwhile Awadh Gramin Bank for grant of FPA/FPP. The Aryavart Gramin Bank vide their circular No. 2/87 dated 17.09.2007, terminated the facility of FPPA/FPP with immediate effect. The circular No. 2/87 dated 17.09.2007 in this respect reads as under:

“हम आपको अवगत कराना चाहेंगे कि समामेलन के पूर्व तथा वर्तमान में पूर्ववर्ती अवध ग्रामीण बैंक में समस्त अधिकारियों/कर्मचारियों को वेतनमान के अधिकतम पर पहुँचने के एक वर्ष बाद एफ पी ए/एफ पी पी दिये जाने की व्यवस्था है। लेकिन शेष दो पूर्ववर्ती बैंकों.....में ऐसी कोई व्यवस्था नहीं थी।

समामेलन के पश्चात् पूर्ववर्ती ग्रामीण बैंकों में एकरूपता लाने के लिए बैंक निदेशक मण्डल ने दिनांक 07-9-2007 की सातवीं बैठक में पूर्ववर्ती अवध ग्रामीण बैंक में समस्त अधिकारियों/कर्मचारियों को वेतनमान के अधिकतम पर पहुँचने के एक वर्ष बाद मिलने वाली एफ पी ए/एफ पी पी को तत्काल प्रभाव से समाप्त/वापस लेने का निर्णय लिया है, क्योंकि एफ पी ए/एफ पी पी नियमानुसार देय नहीं था। अतः पूर्ववर्ती अवध ग्रामीण बैंक के अधिकारियों/कर्मचारियों को मिलने वाला एफ पी ए/एफ पी पी पर तत्काल प्रभाव से रोक लगाई जाती है।”

Thus the stand taken by the management of Aryavart Gramin Bank that the continuance of FPA/FPP, which was not as per Rules, may be terminated, was in order.

20. The stand taken by the management that the reference relates to the officers of amalgamated bank who do not fall within the definition of “workman” seems having no force as the parties have pleaded that the FPA/FPP was admissible to employees/officers of the erstwhile Avadh Gramin Bank, therefore, when it was extended to employees then it can be well said that the reference order relates to the class of people who come in the ambit of definition of ‘workman’ as provided in Section 2 (s) of the Industrial Disputes Act, 1947.

21. Therefore, from the facts and circumstances of the case and discussions made hereinabove, I am of considered opinion that the action of the Aryavart Gramin Bank in withdrawing of FPA/FPP benefits from the salary of erstwhile employees of Awadh Gramin Bank by means of letter dated 17.09.2007 was just, fair and legal; hence, the reference under adjudication is adjudicated against the workman's Union and accordingly, I come to conclusion that the workman's union is not entitled for any relief.

22. Award as above.

LUCKNOW

09th October, 2015.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2104.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दोर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या (102/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/300/95-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2104.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.102/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Satate Bank of Indore and their workman, which was received by the Central Government on 29/10/2015.

[No. L-12012/300/95-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/102/97

Shri Ram Nagwanshi,
General Secretary,
All India State Bank of Indore
Employees Congress,
9, Sanwer Road, Ujjain

...Workman/Union

Versus

Asstt. General Manager,
State Bank of Indore,
Maharana Pratap Nagar,
Bhopal

...Management

AWARD

Passed on this 1st day of October, 2015

1. As per letter dated 25-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section -10 of I.D. Act, 1947 as per Notification No.L-12012/300/95-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of Indore in terminating the services of Shri S.K.Mukati, Spl. Assistant, State Bank of Indore, Morar (Gwalior) w.e.f. 6-1-94 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through General Secretary, Bank Employees Union at Page 3/1 to 3/10. Case of 1st party workman is that workman Sushil Kumar Mukati was appointed on 8-4-69 in Bank. He worked with devotion. Workman was promoted to the post of Special Assistant. On 19-6-90, shri Mukati had taken charge in Morar branch. Without giving any training, charge of Saving Account, R/D Accounts, pension was entrusted to him. His authority was restricted to withdrawal upto Rs.20,000/-. The withdrawal above Rs. 20,000 was processed by Shri Sarvate. There used to be rush of work of pension during 1st to 5th day of the month. On 9-3-91, Sbaccount Holder Jagdish Vyas submitted withdrawal of Rs.10,000 alongwith pass book. Shri Jagdish himself refused to accept payment telling that he used to sign in Hindi. That on 20-9-91, cashier Shri R.L.Verma sent Mr. Vijay Kumar Jain to workman for immediate issue of the cheque. Following directions of Sr. cashier, the cheque was issued after verifying the specimen signature. On 21-9-91, Mr. vijay Kumar Jain came for cheque of Rs.35,000. As amount was above Rs.20,000, specimen signature and pass book were sent to Mr. Sarvate. Mr. Sarvate after verifying specimen signature passed payment of Rs.35,000 to Mr. Vijay Kumar. On 28-10-91, Vijay Kumar Jain submitted withdrawal of Rs.15,000 along with pass book. The counter clerk found no balance in his account. Mr. vijay Jain had submitted complaint that he not withdrawn amount of Rs. 35,000 on 21-9-91. Thereafter the officers of the Bank threatened workman to admit charges assuming that workman and Mr. Sarvate did the same.

3. Workman has alleged that incident was reported to police, chargesheet was issued on 7-9-91. The charges related to withdrawal of Rs.10,000 on 27-1-92, amount of Rs.35,000 on 27-1-92. The Defence Assistant did not participate in Enquiry proceedings. He was not given opportunity to cross examine the management's witness. Shri vijay Kumar Jain was not a witness in Enquiry proceedings. Enquiry was vitiated. The finding of enquiry Officer are perverse. He was not supplied report of preliminary enquiry. Enquiry was not conducted following principles of natural justice. On such ground, workman prays for setting aside order of his dismissal and prays for reinstatement with backwages.

4. 2nd party management filed Written Statement at Page 9/1 to 9/3 opposing claim of the workman. 2nd party contends that workman was posted as incharge of Saving

Bank Account. Cheque No. 217461-72 were issued to same person. Ist party workman had shown extra interest while issuing cheque books. He was not vigilant while issuing the cheque book. The pyament of Cheque No. 217461 – Rs. 35,000 for self was issued on 21-9-91. The bogus cheque was submitted by unauthorised person. Workman shown undue interest and issued token taking entries in ledger, cash book and order for payment. Workman not shown diligence to verify the specimen signature and passed payment on 10-6-87, 26-6-89, duplicate and triplicate pass books were issued on the ground that false pass book were lost. Token for payment was issued to unauthorised person. En enquiry conducted against workman, charges were found proved. Considering gravity of the charges proved against workman, the punishment of dismissal was imposed. The 2nd denied contentions in Para-1,3,7 to 23 in statement of claim. All adverse contentions of workman are denied. The contentions in Para 35, 36 of statement of claim are claimed to be false. Workman was given opportunity for his defence. On such contentions, 2nd party prayed reference be answered in its favour.

5. Workman filed rejoinder at Page 10/1 to 10/2 reiterating its contentions in statement of claim.

6. The enquiry conducted against workman is found legal as per order dated 9-5-2014. Considering pleadings between parties and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|---------------------|
| (i) Whether the charges alleged against workman are proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Negative |
| (iii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. As per finding on issue, enquiry is found proper and legal. Whether the charges against workman are proved needs to be decided from evidence in Enquiry Proceedings. MW-2 Shri S.R.Milani in his evidence at Page 11/28 to 11/30 of Enquiry Proceedings has stated about the signatures on document MEX-2 that he had carried preliminary enquiry in the matter. When in MEX-13 signature is appearing on Shri S.K.Mukati, MEX-4, S.K.Mukjati signed in his presence. MEX-26 letter was given to Shri Mukati calling necessary information. MW-3 Ram Naresh Thakur in his statement before Enquiry Officer says document

MEX-15 is payment scroll. The details of payments are given in it. Entry of payment of Rs. 35,000 is taken in the scroll. Account was opened on 28-9-84. MW-5 Shri G.S.Chadda in his statement before Enquiry Officer says on 31-10-91, workman Shri S.K.Mukati had given his statement MEX-22 in his presence. Workman signed in his presence. He has also signed on the document as witness. In document MEX-22, workman had admitted evidence is given by MW-2 K.K.Bhatt. Shri Bhatt says document MEX-23 bears his signature. The statement of workman was recorded on 2-11-91. It bears signature of workman. The evidence of the management's witness is not shattered in their cross-examination. The scope of judicial review under Section 11-A of ID Act is limited. The evidence cannot be re-appreciated. The evidence of CBI Officer is also clear that during inspection, he recorded statements. Cheque of Rs.35,000 submitted by Shri Vijay Kumar Jain. The evidence of other witnesses also supports finding of Enquiry Officer. The findings of Enquiry Officer cannot be said perverse. For above reasons, I record my finding in Point No.1 in Affirmative.

8. Point No.2- Evidence in Enquiry Proceeding is clear that workman had taken entries in payment scroll about payment of Rs.35,000. The payment was sanctioned by shri Sarvatte Sr. officer. Considering the passing remark of Ist party workman, the payment was actually sanctioned by Mr. Savatte replying endorsement made by workman. The power of Ist party were restricted to withdrawal of Rs.20,000. For payment sanctioned by Mr. Sarvatte without examining the specimen signatures, Ist party workman cannot be held responsible. Ist party workman was appointed on 4-4-79. Before termination of his service from 6-2-94, he completed long tenure with the Bank. Said aspect was not considered by Disciplinary Authority while imposing the punishment. The payment of cheque of Rs.35,000 was sanctioned by Shri Sarvatte. The punishment of dismissal imposed against workman is excessive. The length of unblemished long service was not considered. The workman died during pendency of the proceeding. Considering above aspect, the punishment of dismissal imposed against workman needs to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The of the management of State Bank of Indore in terminating the services of Shri S.K.Mukati, Spl. Assistant, State Bank of Indore, Morar (Gwalior) w.e.f. 6-1-94 is not proper and legal.
- (2) Punishment of dismissal imposed against deceased workman is modified to compulsory retirement. Retiral benefits be given to deceased workman/ his LR.
- (3) Parties to bear their respective costs.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या (48/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/143/95-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.48/1996) of the Indus. Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner & Jaipur and their workmen, received by the Central Government on 29.10.2015.

[No. L-12012/143/95-IR(B-1)]

SUMATI SAKLANI, Section Officer

अनुबंध

औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 48/1996

रैफरेंस : भारत सरकार, श्रम मंत्रालय, नई दिल्ली की अधिसूचना क्रमांक एल. 12012/143/95 आई.आर.(बी), नई दिल्ली, दिनांक 09.10.1996

1. अनिल कुमार पुत्र दुर्गालाल, प्लॉट नम्बर 2/125, टीला नम्बर 1, आजाद नगर, कच्ची बस्ती, दिल्ली बाईपास रोड, हरिजन बस्ती-जयपुर।
2. अध्यक्ष, ऑल बैंक सफाई कर्मचारी संघ, राजस्थान मार्फत सेंट्रल बैंक ऑफ इण्डिया, आकाशवाणी के पास, एमआई रोड, जयपुर।

.....प्रार्थीगण

बनाम

1. प्रबंधक, आंचलिक स्टेशनरी आगार, स्टेट बैंक बीकानेर एण्ड जयपुर, अंकुर सिनेमा के सामने, घाटगेट-जयपुर।
2. प्रबंध निदेशक, स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर, प्रधान कार्यालय, तिलक मार्ग, जयपुर।
3. उप-महाप्रबंधक, स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर, अंचल कार्यालय, सरोजनी मार्ग, सी-स्कीम, जयपुर।

4. क्षेत्रीय प्रबंधक (प्रथम), स्टेट बैंक ऑफ बीकानेर एण्ड जयपुर, क्षेत्रीय कार्यालय, अंचल कार्यालय, जयपुर।

.....अप्रार्थीगण

उपस्थित

पीठासीन अधिकारी : श्री केदार लाल गुप्ता आर.एच.जे.एस.

प्रार्थी की ओर से : श्री एस. के. तिवारी,

अप्रार्थी की ओर से : श्री ए. मजूमदार,

दिनांक : 02.06.2015

अधिनिर्णय

1. भारत सरकार के श्रम मंत्रालय की आज्ञा क्रमांक एल. 12012/143/95 आई.आर. (बी.), नई दिल्ली दिनांक 09.10.1996 द्वारा निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण के यहां दिनांक 22.10.1996 को इस आशय का प्राप्त हुआ है कि- “Whether the claim of the workmen Sh. Anil Kumar, part time sweeper for full scale of pay the date his junior workmen Sh. Shyam Lal and Satya Narain are given full scale of pay is justified? If so, to what relief the workmen is entitled?”
2. प्रार्थीगण द्वारा एक स्टेटमेंट ऑफ क्लैम प्रार्थना पत्र इस आशय का प्रस्तुत किया कि श्रमिक अप्रार्थी संस्थान के अधीन दिनांक 01.08.1987 से एक तिहाई वेतनमान पर नियुक्ति की गई। अप्रार्थी प्रबंधक, प्रधान कार्यालय, तिलक मार्ग, जयपुर के पत्र संख्या काप्र/451/स्था/3782 दिनांक 04.05.1989 के अनुसार दिनांक 08.04.1988 से बैंक सेवा में अधीनस्थ कर्मचारी वर्ग में स्वीपर पद पर एक तिहाई वेतनमान पर स्थाई किया। अप्रार्थी संख्या 3 के द्वारा श्रमिक से कनिष्ठ श्यामलाल की नियुक्ति दिनांक 01.09.91 को 1992 से पूर्ण वेतनमान दिया गया। छोटेलाल को दिनांक 01.09.91 को 175/- रुपये प्रतिमाह पर अंशकालीन सफाई कर्मचारी पद पर नियुक्त किया तथा दिनांक 05.10.1994 से पूर्ण वेतनमान दिया गया। देवेन्द्र को 1992 में अंशकालीन सफाई कर्मचारी पद पर नियुक्त किया तथा 05.10.94 से पूर्ण वेतनमान दिया गया तथा प्रभुदयाल को 1988 में अंशकालीन सफाई कर्मचारी के पद पर नियुक्त किया जाकर 1995 में पूर्ण वेतनमान दिया गया। श्रमिक ने मामला 1993 को श्रम आयुक्त, जयपुर के समक्ष उठाया, जिस पर दिनांक 13.10.93 को पंजीकृत यूनियन द्वारा मामला उठाने के लिए लिखा गया, जिस पर प्रार्थी संख्या 2 के माध्यम से दिनांक 11.10.1994 को मामला सहायक श्रम आयुक्त, जयपुर के समक्ष प्रार्थना पत्र प्रस्तुत किया गया, जहां विपक्षीगण से मध्यस्थता करवाए जाने बाबत विपक्षीगण को नोटिस जारी किया, विपक्षीगण की ओर से दिनांक 11.01.93 को जवाब प्रस्तुत कर किसी भी प्रकार से सहायता प्राप्त करने का प्रार्थी श्रमिक अधिकारी नहीं होना बताया तथा समझौता वार्ता विफल होने के कारण सहायक

श्रम आयुक्त, जयपुर द्वारा दिनांक 29.05.1995 को सचिव, भारत सरकार, श्रम मंत्रालय, नई दिल्ली को भेजा, यहां से दिनांक 09.10.1996 को भारत सरकार ने अधिसूचना द्वारा यह मामला इस अधिकरण को प्रेषित किया।

3. अप्रार्थीगण की ओर से जवाब प्रस्तुत कर प्रारंभिक आपत्ति ली है कि संघ को स्टेटमेंट ऑफ क्लैम प्रस्तुत करने का अधिकार नहीं है तथा स्टेटमेंट ऑफ क्लैम के पैरा संख्या 1 व 2 के संबंध में कोई आपत्ति नहीं की तथा अन्य बिन्दुओं को अस्वीकार करते हुए स्टेटमेंट ऑफ क्लैम खारिज करने की प्रार्थना की है।
4. प्रार्थी के प्रतिनिधि की ओर से दिनांक 09.03.2015 को No Instruction Plead किया। इस पर प्रार्थीगण क्लेम को इस अधिकरण द्वारा नोटिस दिया गया। प्रार्थी यूनियन की तामील होने के बावजूद कोई उपस्थित नहीं आया तथा प्रार्थी अनिल कुमार की रजिस्ट्री इस नोट के साथ वापस आई कि “प्राप्तकर्ता इस पते पर नहीं रहता है।” प्रार्थीगण की ओर से स्टेटमेंट ऑफ क्लैम के समर्थन में कोई साक्ष्य प्रस्तुत नहीं की है। अतः प्रार्थीगण का स्टेटमेंट ऑफ क्लैम खारिज किए जाने योग्य है तथा श्रमिक किसी भी तरह की राहत प्राप्त करने का अधिकारी नहीं है।
6. उपरोक्त विवेचन के फलस्वरूप प्रकरण में स्टेटमेंट ऑफ क्लैम अवार्ड निम्न प्रकार से पारित किया जाता है—

अधिनिर्णय

“The claim of the workmen Sh. Anil Kumar, part time sweeper for full scale of pay from the date his junior workmen Sh. Shyam Lal and Satya Narain are given full scale of pay is not justified and workman is not entitled for any relief.”

केदार लाल गुप्ता, न्यायाधीश

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2106.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सतपुडा क्षेत्रीय ग्रामीण बैंक प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या (54/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/188/2007-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2106.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/08) of the Cent. Govt. Indus. Tribunal-cum-Labour Court

Jabalpur as shown in the Annexure, in the industrial dispute between the management of Satpura Kshetriya Gramin Bank and their workmen, received by the Central Government on 29/10/2015.

[No. L-12012/188/2007-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/54/08

Shri Mukesh Chourasia,
S/o Shri Ramcharan Chourasia,
Devri, Raisen Distt. (MP)

...Workman

Versus

Chairman,
Satpura Kshetriya Gramin Bank,
(erstwhile KGB Hoshangabad), Head Office,
800/19, South Civil Lines,
Chhindwara

...Management

AWARD

Passed on this 9th day of October 2015

1. As per letter dated 20.3.08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/88/2007-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Chairman, Satpura Kshetriya Gramin Bank in terminating the services of Shri Mukesh Chourasia S/o Ramcharan Chourasia as authorized collection agent w.e.f. 14.2.2004 is legal and justified? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to participate in reference proceeding. He failed to submit statement of claim. On 13.1.2014, Ist party is proceeded exparte.

3. 2nd party management filed Written Statement. The case of 2nd party is that management floated a Gramin Mini Deposit Scheme. Said Bank is merged in Central MP Gramin Bank and Regional office at Hoshangabad, Head office at Chhindwara. The scheme contemplated collection of small amount from the persons desirous of making daily deposits in the bank. Management needed persons and appointed agents including applicant purely on contract basis. The agent was entitled to 2% of total collection

made by him each month. The Bank was paying commission to the workman, collection scheme was quoted by the Bank during 1986 to 2000 in 15 branches out of its total 80 branches. Review of said scheme was taken by them and it was found that scheme was no longer in prevailing circumstances. When the scheme was floated the rate of interest was 13% per annum in respect of term deposit while it was 5% per annum in respect of Saving Bank Account. The cost of implementing the scheme was 8%. At the time when review of the scheme was made the cost become 6.5% for implementing the scheme itself plus operating expenses while the bank has to pay 2% commission to daily deposit collectors under the scheme and interest at 3% per annum to depositors. The cost of scheme was found not economical therefore the Bank was instructed to close the scheme as per decision of Board Directors dated 9.3.04 published in newspaper. As a result, workman was terminated.

4. That engagement of workman was purely contractual. He was not regular employee of the Bank. Workman was paid commission on the basis of amount collected by him and deposited in the Bank as per the agreement. As per Clause I and 15 of the agreement dated 6.9.99, the terms and conditions mentioned in appointment letter dated 21.7.99, it was discretion of the Bank to terminate without notice to the authorized collection agent without assigning reasons. That the matter is governed by Section 2(00)(bb) of ID Act and doesnot amount to retrenchment. Provisions of Section 25-F of ID Act are not attractred as workman terminated as per the terms of contract.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the action of the management of Chairman, Satpura Kshetriya Gramin Bank in terminating the services of Shri Mukesh Chourasia S/o Ramcharan Chourasia as authorized collection agent w.e.f. 14.2.2004 is legal and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

6. As narrated above, workman has failed to file his statement of claim. Workman is proceeded exparte on 13.1.2014. 2nd party filed affidavit of evidence of witness Rakesh Suri supporting contentions of management in Writen Statement that as per terms and conditions of the agreement, services of workman were terminated as the collection scheme noted by Bank during 1986 to 2000 was

not economical vital. Workman not completed 240 days continuous service in any calendar year. Section 25-F of ID Act is not attracted. Evidence of management's witness remained unchallenged as workman failed to participate in reference and cross-examine witness of management. I donot find any reason to disbelieve the evidence of management's witness as workman has not filed any evidence to substantiate his claim. I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under :-

(1) The action of management of Chairman, Satpura Kshetriya Gramin Bank in terminating the services of Shri Mukesh Chourasia S/o Ramcharan Chourasia as authorized collection agent w.f.f. 14.2.2004 is legal and proper.

(2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2107.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदोर प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या (174/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/266/2001-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2107.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 174/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jabalpur as shwon in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 29.10.2015.

[No. L-12012/266/2001-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/174/2001

General Secretary,
Dainik Vetan Bhogi Bank Karamchari Sangathan,
9, Sanwer Road, Hardeo Niwas,
Ujjain.

...Workman/Union

Versus

Dy. General Manager,
State Bank of Indore,

Zonal Office,
Indore (MP)

...Management

AWARD

Passed on this 14th day of October 2015

1. As per letter dated 15.11.2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/266/2001-IR(B-I). The dispute under reference relates to :

“Whether the action of the General Manager, State Bank of Indore (MP) in terminating the services of Shri Shyamlal, Peon-cum-Farrash as justified? If not, what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 4/2 to 4/9. Case of Ist party workman is that he was working on scale wages during 1983-84 on pay scale Rs. 690.90. He was again engaged from 22.12.93 on daily wages. He was doing the work of cleaning, sweeping and other works of the peon. He was working till 31.3.98. He completed 240 days continuous service during each of the year. He was paid bonus after filing proceeding before ALC. In proceeding before ALC, 2nd party admitted working of 376 days during the period 12.1.94 to 2.5.98. Bonus of Rs. 1031 was paid on 14-9-98. Workman further submits he had completed 240 days continuous service during 97-98 at Ratlam, 336 days and 289 days during period 10-3-97 to 6-5-98. The services re terminated without notice. He was not paid retrenchment compensation. His services are terminated in violation of Section 2S-F of ID Act. the due amount of bonus was not paid to him. On such ground, he prays for reinstatement with backwages.

3. 2nd party filed Written Statement at Page 9/1 to 9/8 opposing claim of workman. Case of 2nd party is that workman was engaged during leave vacancy of regular sub staff. Workman was engaged on daily wages as per exigencies. Workman was not appointed by Bank following recruitment process. his name was not sponsored through Employment Exchange as per rules of the Bank. Shri Ram Nagwanshi is a dismissed employee of Bank, he is not competent to raise the dispute. Workman was not included in panel list maintained by Bank working 240 days on casual basis doesnot give workman right to the post. The reference is delayed. The delay is not explained therefore reference is not tenable. Workman is not entitled to any relief.

4. Workman filed rejoinder at Page 13/1 to 13/4 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the General Manager, State Bank of Indore (MP) in terminating the services of Shri Shyamlal, Peon-cum-Farrash is justified?

In Negative

(ii) If not, what relief the workman is entitled to?”

As per final order

REASONS

Workman filed affidavit of his evidence supporting his contentions that he worked during 3-10-83 to 31-3-84 on pay scale. From 22-12-93, he was engaged on wages Rs.30/- per day. He continuously worked till 12-5-90 at Station Road Branch, Ratlam. He had completed more than 240 days. During 1997-98, he worked for 290 days total 672 days. His services were terminated without notice from 12-5-98. In his cross-examination, workman says he passed 8th standard. He had not appeared in selection process. He was doing work of cleaning, sweeping and taking ledger. He was not interviewed. Appointment letter was not given to him. He was also doing work of stitching vouchers of regular peons. Two regular peon were working in the branch. In 1983-84, he was paid on skilled wage basis, its basic pay was Rs. 436/-. During 22-12-93 to 31-12-95 he was paid Rs. 30 per day from 10-3-97 to 6-5-98. He was paid Rs. 40/- per day. He denied suggestion that he was working only for 2-3 hours in a day. The evidence of workman that he was continuously working for more than 240 days is not challenged in cross-examination of workman.

7. Management's witness Dilip Kumar filed affidavit supporting contentions of 2nd party in Written Statement that workman was engaged as per exigencies. Workman was not continuously working. He was not appointed by the Bank. In his cross-examination, management's witness says he is giving evidence on information given by Branch Manager. Shri Mandloi and Kule couldnot be contacted. Shri Rajiv Agrawal Branch Manager Station Road branch was contacted by him through telephone. Management's witness denied that workman worked for 3-4 years. He claims ignorance about payment of bonus at both the branches. The evidence of workman that he worked more than 240 days during 93 to 98 is not challenged in cross-examination. Evidence of management is not supported by documents.

8. Workman has produced documents Exhibit W-1 pertaining to claim of workman for bonus. Exhibit W -2 is reply submitted by 2nd party to ALC. The working for 376 days on daily wages by workman is admitted during the period 10-1-94 to 2-5-98. The management had denied that workman had completed 240 days continuous service. Exhibit W -3 is reply given to ALC shows workman had completed 376 days working. He worked for 233 days in 1997-98 and 20 days in 1998-99. Exhibit W-5 is Asstt. Manager requesting review of the matter. Exhibit W-6

Asstt. General manager requested to arrange meeting for conciliation. Exhibit W - 7 is letter issued by Bank Manager regarding payment of bonus to workman. Exhibit W-8 also relates to payment of bonus to workman. Exhibit W -9 pertains to payment of bonus of Rs.100. 145.35 Rs to workman for the year 1983-84. W-I0 is General manager requested for review of the matter. Exhibit W -11 shows his appointment letter of workman on pay scale, basic pay is shown Rs.245/-. All those documents clearly shows that workman was working in the bank on daily wages. His evidence that he completed more than 240 days during 1993 to 1998 remained unchallenged. Evidence of management's witness is not supported by documents. I therefore find no reason to disbelieve evidence of workman that he completed 240 days continuous service during 1993 to 1998 and his services are terminated without notice, retrenchment compensation is not paid therefore termination of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point N 0.1 in "Negative.

9. Point No.2- In view of my finding in Point No.1 Termination of workman is in violation of section 25-F of ID Act, workman was engaged on daily wages, he had not appeared for interview. Conciliation process was not followed. Workman was working from 93 to 98. Reinstatement with backwages would not be appropriate.' Considering the period of working, compensation Rs.75,000 would be reasonable. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the General Manager, State Bank of Indore (MP) in terminating the services of Shri Shyamlal, Peon-cum-Farrash is not proper and legal.
- (2) 2nd party management is directed to pay compensation Rs.75,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2108.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर पंचाट संदर्भ संख्या (4/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 प्राप्त हुआ था।

[सं. एल-12011/73/2008-आईआर (बी-I½)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2108.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 29/10/2015.

[No. L-12011/73/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/4/2011

Dy.General Secretary,
State Bank Karmchari Sena,
C/o State Bank of India,
Main Branch, Station Road,
Nagpur

...Workman/Union

Versus

General Manager,
State Bank of India,
Personnel Management Deptt.
16th Floor, Corporate Centre,
Post Box 12, Mumbai

Dy.General Manager,
SBI, Zonal Office,
S.V. Patel Marg,
Kingsway, Nagpur

...Management

AWARD

Passed on this 30th day of September 2015

1. As per letter dated 6-1-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/73/2008-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Nagpur in introducing a new scheme for payment of ex-gratia lumpsum amount in lieu of appointment on compassionate grounds w.e.f. 4-8-05 without issuing notice to the workmen under Section 9-A of ID Act, 1947 is justified? To what relief the dependents and legal heirs of deceased employees/ Union is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union did not appear in the matter. Ist party was proceeded exparte on 14-6-2013.

3. 2nd party filed exparte Written Statement contenting that reference made by Government of India can be inferred that Union has challenged the action of the Bank in rejecting the case of appointment on compassionate ground. Written Statement is further devoted about definition of Industrial Dispute, workman, dismissal of workman. Individual workman has been discharged, dismissed or retrenched otherwise or terminating raising dispute with his employees. That reference made by Government was rejected by CGIT Nagpur. Written Statement also exhaustively devoted about ratio held in various judgments by Apex Court. The object of granting compassionate appointment was to enable the family to tide over the sudden crisis due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such a source of livelihood. The object is to offer compassionate appointment only on the basis of financial condition of the family. Appointments in public services are made strictly on basis of open invitation. The Bank introduced scheme called as SBI Scheme for payment of exgratia amount. The objective of scheme was that because of changing banking scenario in India less manual workforce is needed in the Bank. The Executive Committee of the Central Board in its meeting held on 4-8-2005 approved the scheme for payment of exgratia lump sum amount in lieu of appointment on compassionate ground. The service conditions are those which are governing the employees during his employment and further when the compassionate appointment itself is not fundamental right no notice of change is required to be given.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| “(i) Whether the action of the management of State Bank of India, Nagpur in introducing a new scheme for payment of ex-gratia lump sum amount in lieu of appointment on compassionate grounds w.e.f. 4-8-05 without issuing notice to the workmen under Section 9-A of ID Act, 1947 is justified?” | An Affirmative |
| “(ii) If not, what relief the workman is entitled to?” | Workmen/ Union are not entitled to any relief. |

REASONS

5. As stated above, Union has not participated in reference after the service of notice. Exparte Written Statement is filed by Bank. Affidavit of evidence is filed

by Shri Narsingh Kumar Mehta supporting contentions in Written Statement filed by 2nd party. management's witness is not cross-examined. There is no evidence to support contentions of workman raised by the dispute. Therefore I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Union is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29, अक्टूबर 2015

का.आ. 2109.—औद्योगिक विवाद अधिनियम, 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक से प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट संदर्भ संख्या (74/02) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/31/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2109.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.74/02) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 29/10/2015.

[No. L-12012/31/2002-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/74/02

Shri Ratanbahadur
S/o Shri Kishanbahadur,
R/o Ajanta Talkies,
Near Bansal Bhawan,
H.No.18, Ratlam

...Workman

Versus

Asstt. General Manager,
State Bank of India,
Zonal Office, Hamidia Road,

Region-V,
Bhopal (MP)

...Management

AWARD

Passed on this 28th day of September, 2015

1. As per letter dated 17-5-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/31/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Asstt. General Manager, State Bank of India in not regularizing the services of Shri Ratanbahadur S/o Kishanbahadur is justified? If not, What relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Pages 2/2 to 2/7. Case of workman is that he was working in SBI Ratlam from 1-11-88 to 2-7-97 as messenger against permanent post. He worked in various department like cash, records. That person of high integrity is allowed to work in cash department. Experience certificate was issued by Branch Manager. He belongs to General Category. Management called him for interview, for permanent post of messenger, he had complained against the selection committee. The messenger having lesser days experience were selected by underhand dealings. Many officers of Selection Committee were suspended. That interview conducted was mere formality. Most of the candidates selected from Ujjain by way of corruption. That workman was not allowed to sign attendance register by concerned officer is illegal. Bank not strictly followed guidelines of Sastry Award. Bank was not maintaining record of Class-IV employees. That copy of attendance register maintained by bank is produced. Workman delivered cheque, telegram etc. to the parties. Since 1985, workman was regularly working till 2-7-97. Bank regularised services of juniors. Workman belonging to weaker section could not fulfill illegal demands for regularization in service. As per the rules, temporary employees putting aggregate of 90 days temporary service as on 15-4-85 were given chance for consideration. Workman reiterates that Bank has not maintained attendance record of temporary employees. Workman referred to ratio held in AIR-1976-SC-1111 and reiterated that his service are terminated in violation of Section 25-F of ID Act. On such ground, workman prays oral termination of his service from 1-3-85 is illegal for violation of Section 25-F of ID Act, he is entitled for reinstatement with backwages.

3. It appears that statement of claim is also submitted in Hindi at Pages 8/1 to 8/5 contending that he worked for 85 days during 15-4-85 to 17-7-85, 289 days during 5-3-87 to 28-12-87, 711 days during 1-11-88 to 14-8-91. That his services were terminated without notice. He worked for more than 240 days. He is employee covered under Section 25 B of ID Act.

4. 2nd party filed Written Statement at Pages 12/1 to 12/13 opposing claim. Preliminary objection is raised that Shri Ram Nagwanshi so called General Secretary of Union was terminated after enquiry is not competent to raise the dispute. That Ist party workman was engaged as canteen boy in staff canteen of Collector branch from 15-4-85 to 1-5-85 and 10-5-85 to 17-7-85. There is local implementation committee for staff members. Bank has nothing to do with recruitment by implementation Committee. 2nd party Bank has no direct control over the canteen or work done by canteen boy. Welfare Committee used to make payment to workman through cheque. Workman was not in employment of the Bank. 2nd party reiterates that Ist party employee was initially engaged on daily wages as temporary messenger for 85 days from 10-5-85 to 17-7-85. Workman had not completed 240 days continuous service during any of the calendar year. Workman was Engaged on daily wages. His employment come to end at end of the day. His discontinuation is covered under Section 2(oo)(bb) of ID Act. Engagement of Ist party was depending on exigencies, purely contractual. Bank has elaborate selection procedure for permanent appointment calling names from Employment Exchange. The settlement provides-

“Temporary employees completed 240 days temporary service during 1-7-75 – 270 days service in block of 36 calendar months after 1-7-75, the employees who have completed a minimum of 30 days temporary service in any calendar year after 1-7-75 or a minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75, temporary service of 270 days, 240 days, 70 days or 30 days should have been put in by a temporary employee as on 31-7-88. Said period was extended till 14-8-91”

The eligible daily wagers casual employees who completed required minimum days were given chance for permanent employment. Management issued advertisement in newspaper. Ist party submitted his application to the Bank stating that he worked for 85 days, certificate issued by Branch Manager. As workman worked only for 85 days after cut off date, he could not be absorbed in service of the Bank. It is denied that Ist party was called by Ist party was called by Branch Manager. He was asked not to come on next day. That Ist party employee was engaged by local Implementation Committee as canteen boy. Workman had not completed 240 days continuous service. He is not employ under 25-B of ID Act. The violation of section 25-F of ID Act is denied. Ist party appeared for interview but he was not found eligible as per seniority. That non-engagement of workman is covered under Section 2(oo)(bb) of ID Act as he was engaged on daily wages. Workman is not entitled to scale wages as he was never permanent employee of the Bank. 2nd party prays that workman is not entitled to reinstatement with backwages.

5. Workman submitted rejoinder at Page 15/1 to 15/3 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Asstt. General Manager, State Bank of India in not regularizing the services of Shri Ratanbahadur S/o Kishanbahadur is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. The terms of reference pertains to denial of regularization of workman. Legality of termination of his service in violation of Section 25-F of ID Act is not covered in the order of reference. 2nd party has admitted Ist party working for 85 days prior to cut off date 14-8-91. Workman was called for interview. He could not be absorbed in the Bank as his working days were less.

8. Workman filed affidavit of his evidence. In para-4 of his affidavit, he has stated that he worked for 85 days from 15-4-85 to 17-7-85, 289 days from 1-3-87 to 20-12-87, 711 days from 1-11-88 to 14-8-91. That he was continuously working for more than 240 days. Denial of regularization as per the settlement is illegal. In his cross-examination, workman says he was working in the Bank during 15-4-85 to 1-5-85. He denies that he was working in canteen from 10-5-85 to 17-7-85. He claims ignorance about settlement between Bank and Union. After his interview, appointment letter was not given. H denies that he was not found fit after interview.

9. Though workman has produced large number of copy of documents, no care is taken to prove those documents. Documents produced by workman Exhibit W-1 pertains to 85 days working of workman from 1-5-85 to 1-7-85 and 10-5-85 to 17-7-85. Exhibit W-2 is letter of identity of workman as temporary watchman. W-3 is copy of public notice issued inviting applications from temporary employees. 70 days during 26 calendar months during 1-7-75 to 31-7-86, Exhibit W-4 to 7 are documents relating to payment of retrenchment compensation, one months notice paid to Shri Tekre, Narayan Shivhare, Mukesh, Trilokchand. Those documents do not establish working period of workman prior to the cut off date. Exhibit W-8 is letter issued to branches by Chief Personnel Officer informing that the candidates interviewed in 1989 were not required to be called for interview in 1997. Exhibit W-9

is letter issued to Shri G.K.Sarsia part time employee for interview. Exhibit W-10 is certificate of working days of Gopal Sarsia that he worked for 67 days. Exhibit W-11 is appointment letter issued to Vyas. Exhibit W-12 is certificate of 103 working days of Kamal Kishore Vyas. Exhibit W-14 is letter issued to branches by Asstt. General Manager that the appointments were to be given to temporary employees in the list. Exhibit W-15 is copy of letter dated 12-12-02 prohibiting employment in subordinate cadre. Exhibit W-16 is certificate issued by Bank that workman was on duty on 20-1-93 as canteen boy. Said document support contention of workman that he was working in the Bank prior to cut off date 14-8-91. Copies of settlements are produced at Exhibit M-1 to M-5. Parties are not in dispute about settlement and cut off date prescribed for absorption of temporary employees. 2nd party had admitted workman was working for 85 days prior to cut off date. Copy of select list is produced at Exhibit M-6. Working days of last candidate appointed is shown 96 days at Sl.No.169 candidate having less number of working days. Considering working days of workman prior to cut off were 85 days, shows that workman is not discriminated. In Exhibit M-6, candidate at Page 173 candidate Gulab Singh appointed having 73 days working is from ST category. Workman is from General Category. Workman cannot compare himself with the candidate of SC Category.

10. Management's witness Shri Shukla filed affidavit of evidence supporting contentions of 2nd party in Written Statement that workman had worked for 85 days till 17-7-85, he not completed 240 days continuous service as per the settlements. In his cross-examination, management's witness says he was not posted in April to July 95 at Collector branch, Ratlam. During March 87 to December 87, he was not posted in Ratlam branch. During 1988 to 2000, he was not posted at Collector branch, Ratlam. That he had not seen complete record of canteen. The appointment letter was not issued to workman. He was engaged as casual employee. The rules about welfare committee are not produced. Workman was not issued notice, retrenchment compensation was not paid to him.

11. Learned counsel for 2nd party Shri V.P.Khare relies on ratio held in

Case of State of Karnataka and others Versus Shri M.L.Kesari and others reported in 2010(9)SCC-247. Their Lordship held appointment of qualified persons made against sanctioned posts without following process of open competition are irregular appointments. Only irregular appointees are entitled to regularization in terms of Para 53 of Umadevi case.

The evidence in cross-examination of workman does not substantiate claim of workman that he worked more than 240 days prior to the cut off date. The evidence discussed above does not show that workman has been discriminated. Therefore, I record my finding in Point No.1 in Affirmative.

12. In the result, award is passed as under:-

- (1) The action of the management of Asstt. General Manager, State Bank of India in not regularizing the services of Shri Ratanbahadur S/o Kishanbahadur is proper and legal.
- (2) Workman is not entitled to any relief.

R.B.PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का. आ. 2110.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट संदर्भ संख्या (145/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 प्राप्त हुआ था।

[सं. एल 12012/453/2001-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2110.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 145/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 29/10/2015.

[No. L-12012/453/2001-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/145/2002

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9,
Sanwer Road, Ujjain ...Workman/Union

Versus

Asstt. General Manager,
State Bank of India,
Zonal Office, Hamidia Road,
Bhopal (MP) ...Management

AWARD

Passed on this 16th day of September, 2015

1. As per letter dated 18-10-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section -10 of I.D.Act, 1947 as per Notification No.L-12012/453/2001-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager, State Bank of India, Bhopal in terminating the services of Shri Roopnarayan shivhare w.e.f. 11-12-98 and not regularizing him even after completing more than 240 days in a calendar year is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through daily wage Bank Employees Union at Pages 2/1 to 2/8. Case of Ist party is that workman Roop Narayan Shivhare worked for 91 days as messenger in 1983, certificate of working days was issued. During the period 27-11-84 to 19-2-85, he worked for 67 days as messenger. The certificate of working days was issued. The workman was called for interview on 27-4-85 for absorption as regular employee. He was interviewed on that day. As per settlement dated 17-11-87, temporary employees working more than 30 days during 1-1-1975 to 31-7-88 are eligible for appointment as regular employee. That he had worked for 158 days. Workman was called for interview on 22-9-89. After interview, his name was included in panel list. As per letter dated 10-2-97, he was informed that he was interviewed earlier therefore it was not necessary to interview again.

3. Ist party workman submits that he was not called for interview in 1997 as he was interviewed in 1989. Since 8-6-93, he was continuously working as messenger. On 11-12-98, workman was called in cabin and his services were terminated. Cheque of Rs. 2160/- was given to him. Workman reiterates that he was continuously working more than 240 days. He also reiterates that he worked for 91 days in main branch till 14-8-91. His name was included in panel list. He was paid bonus R. 2067 by cheque on 8-8-01. He worked more than 1500 days during 3-6-93 to 11-12-98. His services are terminated illegally. 2nd party has violated settlement dated 17-11-89. The act of management is punishable under section 29 of ID Act. On such grounds, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement opposing claim of workman. Case of 2nd party is Shri Ram Nagwanshi is not competent to raise dispute as his services were terminated from SB of Indore. He has no authority to represent workman. Workman was engaged on daily wages on contract basis for 91 days during the period 1-1-1983 to 31-12-1983, 67 days during 27-11-84 to 19-2-85. Workman was not continuously working. Management paid wages for the period of engagement. Workman had not completed 240 days continuous service during any of the year. As per ratio held in case of Secretary of State of Karnataka versus Umadevi and others, workman is not entitled to reinstatement. Workman was not selected after his interview. It is denied that workman was continuously

working. As working days of workman were less than other temporary employees, he was not appointed. Workman was paid retrenchment compensation Rs. 2160/-. In para-11 of Written Statement, working days of workman are shown 108 days in 1994-95, 203 days in 1995-96, 219 days in 1996-97, 202 days in 1997-98 & 114 days in 1998-99 Total 746 days. As work was not available, workman was discontinued. 2nd party submits that workman was not entitled for reinstatement.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Assistant General Manager, State Bank of India, Bhopal in terminating the services of Shri Roopnarayan shivhare w.e.f. 11-12-98 and not regularizing him even after completing more than 240 days in a calendar year is justified?	In Negative
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(ii) If not, what relief the workman is entitled to?"	As per final order.
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REASONS

6. Workman is challenging termination of his service denying regularisation by 2nd party. Affidavit of his evidence is filed by workman. Workman in his affidavit says he worked for 91 days during 1-1-1983 to 31-12-1983 and 67 days during the period 27-11-84 to 19-2-85. He was called for interview on 27-4-85. As per settlement dated 17-11-87, temporary employees working for 30/70 days as sub staff are eligible for regular absorption. He worked for 158 days. he was called for interview on 27-9-89. He was engaged by bank from 8-6-93. He was paid wages on daily wage basis instead of pay scale. He was not called for interview in 1997 as he was interviewed earlier in 1989. That his services were forcibly terminated paying compensation Rs.2160/-. From his evidence, documents Exhibit W-1 to W-7 are proved.

7. Workman in his cross-examination says he was engaged by Bank in 1983, his name was not sponsored through Employment Exchange. The post was not advertised. In 1983, he was not interviewed. Appointment letter was given to him. During 1983 to 1998, he was intermittently working in Bank. During 1993 to 1998, he worked for 1280 days. The details of his work are not given in his affidavit. In 1998 along with him 8-10 persons were terminated. He was unable to tell reason for his termination. He was paid retrenchment compensation. He has not produced receipt of membership of the Union. He joined Union in the year 2000.

8. Management's witness Yogesh Vijaya filed affidavit of his evidence. In para 2 of his affidavit, working days of workman are shown 91 in 1983, 67 days during 27-11-84 to 19-2-85. Working days for the period 94-95 to 98-99 are shown as per the Written Statement. The affidavit of management's witness also refers to settlement dated 17-11-87, 16-7-88, 27-10-88, 9-1-91. The period was extended till 14-8-91. Workman was called for interview on 27-9-89, wait list of selected candidates was prepared. Waiting List was valid till March 1997. That no junior was retained in service by management. Workman had not completed more than 240 days during any of the calendar year. Retrenchment compensation Rs.2160/- was paid to workman on 11-2-90. In his cross-examination, management's witness says he was not posted in GPO branch during 1983 to 1985, 1994 to 1998. He has not disclosed about the case with the Branch Manager working during said period. He claims ignorance about sanctioned post of peon in GPO branch during 1994 to 1999. Appointment letter was not given to workman. His attendance register was not maintained. Workman was paid wages every day. He claims ignorance how the wages were paid. Bonus was not paid to workman. Permission of Government was not taken for terminating services of workman. Retrenchment notice was not given to workman. He claims ignorance whether list of daily wage employees was displayed. Exhibit W-8 is admitted by management's witness.

9. Copies of settlements are produced at exhibit M-1 to M-5. The list of selected candidates are produced at Exhibit M-6. Name of 1st party workman is appearing at page 56 at Sl.No.157. his working days are shown 91. In Written statement and evidence of management's witness, workman was working for 91 days in 1983 and 67 days during 84 to 85. Total working days is 158. However his working days in M-6 are shown only 91 days. The correct working days of workman are not shown in Exhibit M-6. In Exhibit M-6, Bhagwandas candidate at Sl.No.161 is appointed. His working days are shown 96 from Category C-I whereas working days of workman are shown 158 days. Workman is not given appointment after his interview as the working days were shown 91 days instead of 158 days. Exhibit M-1 is not in dispute between parties. The said settlement provides- employees completed 240 days temporary service during 1-7-75 – 270 days service in block of 36 calendar months after 1-7-75, the employees who have completed a minimum of 30 days temporary service in any calendar year after 1-7-75 or a minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75 are given chance for permanent appointment in Bank service is likely to arise during 1987 to 1991. Working days of workman were wrongly shown in Exhibit M-6. Workman was illegally denied appointment. Candidates having less working days were appointed. The term of reference pertains to legality of termination and denial of regularisation. Considering

158 working days of workman, he was entitled for absorption after his interview. List Exhibit M-6 is not disclosing whether the said list is of 1989 or 1997. The list of 1989 is not produced on record. Exhibit W-8 admitted by management's witness also shows 91 days working days of workman in 1983. Exhibit w-2 shows 67 days working in 1984-85. Exhibit W-4 is copy of public notice. Exhibit W-5 is interview call of the workman. From evidence discussed above, it is clear that workman is illegally denied regularisation after his interview. Junior candidates having less working days have been appointed therefore termination of workman is illegal. Evidence of management's witness is silent how retrenchment compensation Rs.2160/- was calculated. The termination notice was not issued to workman, seniority list of daily wage employees was not displayed on notice board therefore termination of workman is illegal for violation of Section 25-F,G,H of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1, workman has illegally denied regularisation after his interview, his services are terminated illegally. Question arises whether workman is entitled for reinstatement with backwages. Workman in his cross says he is working as labour after termination from service. Therefore backwages cannot be allowed to the workman. For illegal denial of regularisation and termination of his services in violation of Section 25-F,G,H of ID Act. Workman is entitled for reinstatement without backwages. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Assistant General Manager, State Bank of India, Bhopal in terminating the services of Shri Roopnarayan shivhare w.e.f. 11-12-98 and not regularizing him even after completing more than 240 days in a calendar year is not proper and legal.
- (2) 2nd party management is directed to reinstate workman but without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2111.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 106/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-41012/22/94-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2111.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/95) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 29/10/2015.

[No. L-41012/22/94-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/106/95

Shri Ambika Prasad,
Behind Raja Kothi,
Rajendra Nagar,
Street No.12, P.O Jawahar Nagar,
Satna (MP)

...Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur

...Management

AWARD

Passed on this 12th day of October, 2015

1. As per letter dated 1-6-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/22/94-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager, Central Railway, Jabalpur in removing Shri Ambika Prasad, S/o Shri Harihar Prasad, Ex-Cleaner boy, T.No. 824, Loco Satna from service vide order dated 25-5-88 is legal and proper? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/5. Case of Ist party workman is he was working as cleaner by holding T.No.224 of Central Railway, Loco Satna with 2nd party No.3. He was appointed on post on 23-1-79. He was working till his removal from service on 25-5-85 for period of six years. Workman further submits that on false allegation of theft of 6 machine oil which was kept at Store room of cleaning boy, Satna. Chargesheet was issued to him on 20-10-84 by 2nd party No.3. He was removed from service as per order dated 25-5-85 without

conducting legal enquiry. That he was not allowed proper opportunity. Natural justice was not followed in the case. Showcause notice before removal from service was not issued. His removal from service is illegal. Though the charges against him pertain to theft, no report was submitted to police. Any complaint to police was not produced before enquiry committee. No theft of oil kept in oil room was committed. That workman was framed for baseless charges of theft of oil. Workman reiterates that his removal from service is illegal. The appeal preferred by workman challenging order of removal was rejected on 15-7-91. His application for deciding case through PNM was not considered. Workman therefore approached ALC, Jabalpur. Failure report was submitted. The charges of theft alleged against him are false. That he is deemed to be in service of 2nd party. Workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at page 8/1 to 8/3 opposing claim of the workman. 2nd party raised preliminary objection that Ist party workman was found in possession of 6.3 litre machine oil in Jerry Cane. Chargesheet was issued under Rule 9 of Railway Servant Rules on 20-10-84. Workman represented that he was not desiring to file anything in writing. Enquiry Officer was appointed. Workman was represented by Shri S.N.Khare, enquiry was conducted as per rules. As per findings of Enquiry Officer, charges against workman were proved. Punishment of removal from service was imposed. The appeal preferred by workman was rejected. Workman was removed from service holding regular enquiry as per the rules. Reasonable opportunity was given for his defence. Charge of attempted theft proved against workman is of serious nature. Removal of workman is illegal.

4. 2nd party denies that enquiry against workman was conducted in violation of the rules. It is reiterated that the removal of workman is after the findings of Enquiry Officer, the charges were proved. The workman had not explained possession of 6.3 litres of machine oil. 2nd party prays that claim of workman cannot be accepted.

5. As per order dated 14-5-2012, enquiry conducted against workman was found proper and legal.

6. Considering findings on enquiry and pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|----------------|
| (i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings? | In Affirmative |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal? | In Affirmative |

(iii) If not, what relief the workman is entitled to?"

Workman is not entitled to any relief.

REASONS

7. In view of finding that enquiry conducted against workman is found legal, whether charges alleged against workman are proved needs to be decided on the basis of evidence in Enquiry Proceedings.

8. The record of enquiry is produced. The charge against workman is on 11-7-84, before information was received that with dishonest intention, machine oil was kept in room of oil boy. On such Ist party was found sitting in front of room having its key. 6.3 litre machine oil was found in jerry cane. Workman had failed to explain in possession. Machine oil was found kept with dishonest intention. The statement of workman was recorded. he denied charges against him. In reply to Q.10, workman admits on 11-7-84, he had gone to Basant Kumar for taking drain tube oil. He had taken issue ticket with him. In reply to Q.13, workman admits that Basant Kumar told him whether he would take oil with him. That he had not seen drain tube oil opening its cork. He says that he was knowing there was drain oil in the jerry cane. He came to know that machine oil was in jerry cane when he opened cork. He says that he was knowing there was drain oil in the jerry cane. He came to know that machine oil was in jerry cane when he opened cork. Workman did not tilt at the time of opening the cork. He did not complaint about the statement recorded by Mr. Sharma. That he had not taken machine oil with dishonest intention.

9. Management's witness Krishna Pal Singh in his statement says on 11-7-84, after receiving information that machine oil was dishonestly kept, he along with others went to the cabin of Ambika Prasad. Workman was sitting in front of room. After opening lock, 6.3 litre machine oil was found in room where it should not have been kept. Similar evidence is given by management's witness Ramnarayan Sharma, B.P.Prasad, J.P.Soni. Management's witness J.P.Soni in his statement says when workman was asked about jerry cane, he told that store Khalasi Basant had given oil in jerry cane to him telling him to keep in room. The machine oil was checked in his presence. Workman did not explain how machine oil was received by him in jeery cane. As per statement of Shri J.P.Soni, workman was knowing that store khalasi Basant had handed over oil to him. All witnesses of management deposed that workman received oil dishonestly in collusion with Basant Kumar. The witnesses of management were cross-examined in detail. That the witnesses of management re-affirmed that workman had dishonestly received machine oil from Basant Kumar. Workman denies dishonest intention in receiving the oil. Evidence about

dishonest intention needs to be considered from the surrounding circumstances. The intention is always in mind of the culprit. No cogent evidence about dishonest intention can be accepted. Scope of judicial review is limited, the evidence cannot be re-appreciated. The findings of Enquiry Officer are supported by evidence of management's witness. When machine oil was kept in jerry cane, room was locked and workman was sitting with key in front of room. The finding of Enquiry Officer cannot be said perverse, no interference is called for in findings of Enquiry Officer. The charges alleged against workman are proved from evidence in Enquiry Proceedings. For above reasons, I record my finding in Point No.1 in Affirmative.

10. Point No.2- In view of my finding in Point No.1 charges of attempt to commit theft of machine oil is proved against workman, question remains for consideration is whether the punishment of removal from service is excessive or disproportionate to the proved misconduct. Attempt to commit theft of 6.3 litre machine oil is a serious misconduct. Railway employee is expected to work honestly. The punishment of removal from service cannot be said excessive of disproportionate to the proved misconduct. For above reasons, I record my finding in Point No.2 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Divisional Railway Manager, Central Railway, Jabalpur in removing Shri Ambika Prasad, S/o Shri Harihar Prasad from service vide order dated 25-5-88 is legal and proper.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2112.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 26/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/221/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2112.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.26/03) of the Cent.Govt.Indus.Tribunal-cum-Labour Court,

Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 29/10/2015.

[No. L-12012/221/2002-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/26/03

General Secretary,
Daily Wages Bank
Employees Association,
Hardev Niwas, 9,
Sanwer Road, Ujjain

...Workman/Union

Versus

Asstt. General Manager,
State Bank of India,
Zonal Office, Hamidia road,
Bhopal (MP)

...Management

AWARD

Passed on this 28th day of September, 2015

1. As per letter dated 26-31/12/02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/221/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Asstt. General Manager, State Bank of India, Bhopal in not regularizing Shri Mahesh Babarkar and not paying bonus to him is justified? If not, what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/6. Case of workman is that his father Chandrashekhar Babakar had taken VRS on 31-12-97. His father was working in Imperial bank as peon since 1950. On account of his health, he had requested transfer to Indore, GPO branch of State Bank. His father was promoted to the post of Nayak on 14-4-82. On completion of 58 years age, his father was informed by the Bank if he desires extension of 2 years, he should produce documents about his fitness. In reply to letter dated 1-7-87, his father informed that he was not keeping good health, he was not desiring extension of 2 years. He submitted letter dated 24-9-83 for VRS, the request for appointment on compassionate ground of Ist

party was not possible he was informed by the bank as per letter dated 21-1-88. Ist party Mahesh Babarkar was engaged on daily wages as messenger in GPO branch Indore from 2-5-90. He was working with devotion. There was no grievance about his working. His wages were paid by voucher from petty cash. Secretary of State bank pensioners Association had written letter dated 22-6-93 that the application for compassionate ground could not be sent to Central office, Mumbai. Workman further submits that he worked for 60 days in 1991, 33 +3days in 1992, 22 days in 1993, 23 days in 1994, 30 + 4 days in 1995, 34 days in 2001.

3. The Bipartite agreements were entered between Staff Federation and the management. 27-10-88, employees working part time as messenger, Farrash, sweeper were considered eligible for regular absorption. If he worked for 30 days during the period 1-7-75 to 31-7-88, workman raised dispute before ALC, Bhopal. Workman further submits that in reply submitted before ALC, management had shown working days in different branches. During pendency of conciliation proceeding, his services were terminated without notice, without paying retrenchment compensation on 30-5-2001 in violation of Section 33 of ID Act. During conciliation proceeding, he was paid bonus Rs.100 by cheque on 8-8-01. On failure of conciliation, report of failure was submitted to the Secretary, Labour Ministry. Workman reiterates that he was continuously working. He was covered as employee under section 25 B of ID Act. His services are terminated in violation of Section 25-F of ID Act. Seniority list of daily wage employees was not displayed on notice board. Policy of last come first go was not followed. Before terminating his services, he was not paid retrenchment compensation. He was not provided re-employment. Workman submits termination of his service is illegal. On such ground workman prays for reinstatement with consequential benefits.

4. 2nd party filed objection that shri Ram Nagwanshi was in employment of State Bank of Indore. His services were terminated after enquiry. He is not employee of State Bank of Indore, he is not competent to represent the employees.

5. 2nd party filed written Statement at Page 8/1 to 8/18 opposing claim of workman raising objection to representation of Ist party workman by Shri Ram Nagwanshi. As per 2nd party, Ist party workman was engaged on daily wages in main branch. Indore and MG Road, branch Indore for 6 days in 91-92, 19 days in 92-93, 31 days in 1995. In MG road branch, he worked for 75 days in 1995. The engagement of workman was as per exigencies. Workman had not completed 240 days continuous service during any of the year. He was engaged on contract basis. Engagement of workman on daily

wages, he was not bound to attend work on next day. Termination of his service cannot be said retrenchment. His discontinuation is covered under section 2(oo)(bb) of ID Act. As workman not continuously worked for 240 days during any of the year workman is not entitled to protection under Section 25-F of ID Act. Settlements were entered between Staff Federation and management on 17-11-87, 16-7-88, 27-10-88, 9-1-99 were applicable to part time employees working till 31-7-88. Said period was extended till 14-8-91. For regularization of services, public notice was issued inviting application from eligible candidates. Workman was not fulfilling the conditions as per bipartite settlement therefore his services could not be regularized. Father of workman had taken VRs after 58 years as he was not fulfilling conditions, he was not given extension of 2 years service.

6. 2nd party denies that workman was appointed as messenger on 2-5-90. Ist party workman worked for 56 days during 1991 to 1995 in main branch and thereafter 75 days in MG Road Branch. Workman was paid wages for the working days. The candidates found eligible were given appointment. After 1995, workman was not engaged by the Bank. Workman had not completed 240 days continuous service. Violation of Section 25-F is denied. It is reiterated that discontinuation of workman engaged on daily wages is covered under section 2(oo)(bb) of ID Act. 2nd party has not violated Section 33 of ID Act. Workman is not entitled to any reliefs.

7. Ist party workman filed rejoinder at Page 11/1 to 11/2 reiterating his contentions in statement of claim.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|--|--|
| (i) Whether the action of the
In Affirmative management of Asstt.
General Manager, State Bank of
India, Bhopal in not regularizing
Shri Mahesh Babarkar and not
paying bonus to him is justified? | |
| (ii) If not, what relief the workman
is entitled to?" | Workman is
not entitled
to any relief. |

REASONS

9. Terms of reference pertains to denial of regularization to workman and not paying bonus. The terms of reference does not pertain to legality of termination of workman or

compassionate appointment. Workman not filed affidavit of his evidence. His evidence was closed on 3-6-2010. Workman had filed his affidavit dated 29-3-06 but he did not appear for his cross-examination therefore his evidence cannot be considered. Documents produced by workman Exhibit W-1 shows that his father was appointed as Nayak on 14-4-1982 on six months probation. Exhibit W-2 father of workman was informed if he desire extension of two years, he should produce certificate. Exhibit W-3 father of workman informed Bank that he was not willing to have further 2 years extension. Exhibit W-4 is circular issued by the Bank dated 11-11-1982 regarding compassionate employment of employees taking VRS on medical ground. The benefit was restricted to the son or widow of the employee. Exhibit W-5 is application submitted by father of workman for VRs. Exhibit W-6 is letter given by branch Manager dated 20-8-85 that father of workman had completed 55 years service. Compassionate employment to his son was not possible. Exhibit W-7 is letter given by Branch Manager to workman that as per rules, his appointment on compassionate ground was not possible. Document Exhibit W-8 shows 1st party workman was paid wages Rs. 375/- on 7-4-95. Exhibit W-9 is notice inviting applications from eligible candidates working during 1-7-75 to 31-7-88 for 30 days, 70 days etc. Exhibit W-10 is reply submitted before ALC opposing claim of workman. It was made clear that in 1992-93, workman worked for 99 days, in 1995-96 for 91 days, in 1995 he worked for 75 days in MG Road Branch. Exhibit W-11 workman was paid retrenchment compensation Rs. 3600/- on 11-12-95. Said document also shows that workman was paid retrenchment compensation and one months pay. Document Exhibit W-11 to W-15 are documents about payment of retrenchment compensation and one months pay to Shri Shyam Sundar and others. Those documents are related to payment of notice or retrenchment compensation to other persons does not advance claim of workman for his appointment on compassionate ground. Exhibit W-16 is letter given by Asstt. General Manager. Appointment given to temporary employees as per letter circular of the Bank. Exhibit W-7 is copy of instruction issued by the Bank dated 12-12-02. Copies of settlements are produced by management at Exhibit M-1 to M-5. Exhibit M-1 provides- "Temporary employees completed 240 days temporary service during 1-7-75 – 270 days service in block of 36 calendar months after 1-7-75, the employees who have completed a minimum of 30 days temporary service in any calendar year after 1-7-75 or a minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75, temporary service of 270 days, 240 days, 70 days or 30 days should have been put in by a temporary employee as on 31-7-88. Said

period was extended till 14-8-91. Workman has not adduced evidence about his working days during above said period, the claim of workman for appointment on compassionate ground is not established. Copy of select list is produced by management at Exhibit M-6. Last candidates appointed had completed 87 days working.

10. Management's witness Smt. Nirupa Joshi in her affidavit of evidence has stated that workman worked for 6 days in 1991-92, 19 days in 1992-93, 31 days in 1995 and in MG Road branch for 75 days in 1995. Workman had not completed 240 days continuous service during any of the period. He is not covered as workman under Section 25 B of ID Act. In her cross-examination, management's witness says in 1990 to 2001, she was not posted at GPO MG Road Branch. Workman was engaged on compassionate ground as his father was ill. He was engaged on daily wages. Selection process was not followed. Permission of Controlling Authority was not taken before engaging workman. Appointment letter was not issued to him. Wages were paid by petty cash. She did not work in GPO, MG Road branch. She admits that workman worked in both branches. Workman was not paid retrenchment compensation, he was not paid bonus. Notice of termination was not given to him. If whole evidence is considered, it is clear that workman had not worked in the Bank prior to 14-8-91 therefore his claim for compassionate appointment cannot be accepted.

11. Learned counsel for 2nd party Shri V.P. Khare relies on ratio held in

Case of State of Karnataka and others versus Shri M.L. Kesari and others reported in 2010(9)SCC-247. Their Lordship held appointment of qualified persons made against sanctioned posts without following process of open competition are irregular appointments. Only irregular appointees are entitled to regularization in terms of Para 53 of Umadevi case.

As workman has not adduced any evidence about working days prior to 14-8-91 claim of workman for regularisation cannot be upheld. For above reasons, I record my finding in Point No.1 in Affirmative.

12. In the result, award is passed as under:-

- (1) The action of the management of Asstt. General Manager, State Bank of India, Bhopal in not regularizing Shri Mahesh Babarkar and not paying bonus to him is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2113.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दोर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 101/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/46/96-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2113.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.101/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workmen, which was received by the Central Government on 29/10/2015.

[No. L-12012/46/96-IR (B-I)]

SUMATI SAKLAN, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/101/97

Shri Mohan Singh Yadav,
55, Biharganj, Agra Bombay Road,
Dewas (MP)

...Workman

Versus

Regional Manager-III,
State Bank of Indore,
Zonal Office, Jiya Chambers,
Kanchan Bagh, Indore

..Management

AWARD

Passed on this 15th day of September, 2015

1. As per letter dated 25-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No.L-12012/46/96-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of Indore in terminating the services of Shri Mohan Singh Yadav w.e.f. 1-6-94 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim

at Pages 3/1 to 3/3. Case of workman is that he was in continuous service of 2nd party State Bank of Indore, BNP Dewas branch from 17-8-93 to 1-6-94. That his services were illegally terminated. That he was continuously working with 2nd party for 289 days from 17-8-93 to 5-6-94. The details of his working days and payments are given in Para 3 of his statement of claim. That he was not paid wages for 49 days by 2nd party. The Bank extracted all work of peon during period of his service. Branch representative shows wages paid to him as labour charges only to deny absorption in Bank service. Workman was denied wages for holidays, Sundays. He was not allowed to mark his attendance in the register. Management indulged in unfair labour practice. He was doing work of perennial nature in the Bank. His services were terminated without assigning any reason. It is submitted that workman was enjoying status of permanent employee. That he claims immediate reinstatement with full backwages. Workman had submitted representations vide letter dated 11-6-94 requesting reinstatement. The copy of said letter was addressed to Regional Manager. Letter dated 20-7-94 was also submitted to Managing Director without any reasons. Workman prays for reinstatement with backwages.

3. 2nd party management filed Written Statement at Pages 7/1 to 7/3 opposing claim of workman. 2nd party denied that workman was appointed in subordinate cadre in bank at Bank Note Press branch, Dewas. It is contented that workman was engaged in BNP branch Dewas as casual labour on different dates as per requirement. Workman was paid for period of his employment, the details shown in R-I submitted along with Written Statement. Workman was engaged only for 192 days on different dates as casual labour. Workman was not continuously working more than 240 days. 2nd party denies that Bank restricted service of peon from him and paid labour charges to the workman. It is reiterated that workman was engaged as casual labour. 2nd party denies that workman was not paid for holidays and denied to mark his attendance. The allegations of unfair labour practice are denied by 2nd party. It is reiterated that workman was engaged as casual labour. He not completed 240 days continuous service. Claim of workman be rejected.

4. Workman filed rejoinder at Pages 3/1 to 3/2 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

"(i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Mohan Singh Yadav w.e.f. 1-6-94 is justified? In Negative

- (ii) If not, what relief the workman is entitled to?" As per final orders.

REASONS

6. Workman is challenging termination of his service for violation of provisions of ID Act. Workman filed affidavit of his evidence. Workman in his affidavit says he was working in State Bank of Indore from 4-6-83 to 17-8-83 for 75 days. Certificate of his working was issued to him. Again he was engaged in said Bank from 17-8-93 to 1-6-94 for 289 days as peon. He was discontinued from 1-6-94 for 289 days as peon. He was discontinued from 1-6-94. In his cross-examination, workman says his age was 45 years. For permanent staff, 15-20 was working in the branch. He was engaged on daily wages. He was not paid wages at Collector rate. Initially he was paid Rs.25/- per day. It was increased to Rs.30/- per day. Permanent staff was paid as per the bipartite settlement. He submitted application in Bank for permanent post. In his cross-examination, there is no denial that Ist party workman was not working for 75 days in 1983 and 289 days prior to termination of his service.

7. Management's witness Shri Saxena in her affidavit of evidence says workman was engaged in BNP Dewas branch from 17-8-93 to 27-4-94 for 192 days. Workman had not worked for 240 days. He denied that service of peon was extracted from workman and labour charges were paid to him. Casual labour is engaged on day to day need basis. There is no question of payment of holidays. There was no question of issuing appointment letter. In her cross-examination, witness admitted R-I, it is marked Exhibit M-1. Said document shows working days of workman on which document, Exhibit M-1 was prepared is not explained by management's witness. In her further cross, management witness says the documents are available in branch. As she was not asked for documents, the documents were not produced. The work for which workman was engaged, other employees were doing similar work. The list of casual employees was not prepared. Before discontinuing service of workman, it was not verified casual labours engaged in the Bank. Management's witness was unable to tell reasons for termination of services of workman. She denies that the material witness is not examined in the case as he may support claim of workman. Workman was not paid bonus. She works as Manager HR. She denies that to protect interest of Bank, her affidavit is produced. Though management's witness admits that the documents relating to workman are available in the branch, those documents are not produced. There is no denial in cross-examination of workman that he not completed 240 days continuous service. The termination of service of workman without notice, not paying retrenchment compensation, not displaying seniority list is in violation of Section 25-F, G of ID Act. Therefore I record my finding in Point No.1 in Negative.

8. Point No.2- In view of my finding in Point No.1 services of workman are terminated illegally, question remains for consideration is whether workman is entitled for reinstatement with backwages.

9. Learned counsel for workman Shri Gehlod during his submissions referred to ratio held in case of 2007-1-SCC-588, 1996-2-LLN-436, 2003-LIC-866 but any of the citations are not made available.

10. Learned counsel for 2nd party Shri V.P.Khare submits that workman on daily wages cannot be reinstated. In support of his argument, learned counsel relies on ratio held in.

Case of Nand Kumar versus State of Bihar reported in 2014(5) SCC 300. Their Lordship dealing with services of casual labour daily wagger held daily wagger are not appointees in strict sense of term appointment, they donot hold post. Status and rights of daily wagers of a Government concern are not equivalent to that of Government Servant and claims of daily wagger would be adjudged differently.

Next reliance is placed in ratio held in case of Allahabad Bank versus Shri Prem Singh reported in 1996(II) BC 387(SC). Their Lordship held that status of daily wagger stood terminated at the end of each day. This being so the decision of the Tribunal in holding that the respondent shall be deemed to have continued in service from 16-6-77 and would also be entitled to usual pay and allowances is clearly untenable. The respondent could not insist on his being continued to be employed and the appellant was under no legal obligation to employ him.

Workman engaged on daily wages cannot be reinstated in service as services of workman are terminated without notice, no retrenchment compensation is paid and workman hardly worked only for 289 days, compensation Rs. 25,000/- would be appropriate. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of State Bank of Indore in terminating the services of Shri Mohan Singh Yadav w.e.f. 1-6-94 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs. 25,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2114.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट

बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 144/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-12012/451/2001-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th October, 2015

S.O. 2114.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.144/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 29/10/2015.

[No. L-12012/451/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/144/2002

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9,
Sanwer Road, Ujjain ...Workman/Union

Versus

Asstt. General Manager,
State Bank of India,
Zonal Office, Hamidia road,
Bhopal (MP) ...Management

AWARD

Passed on this 16th day of September, 2015

1. As per letter dated 18-10-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/451/2001-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager, State Bank of India, Bhopal in terminating the services of Shri Harishankar Saxena w.e.f. 11-12-98 instead of regularizing him is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through daily wage Bank Employees Union at Page 2/1 to 2/8. Case

of Ist party is that workman Shri Harishankar Saxena worked for 93 days as messenger in 1983, certificate of working days was issued. During the period 9-5-83 to 9-8-83, he worked for 93 days as messenger. The certificate of working days was issued. The workman was called for interview on 27-4-85 for absorption as regular employee. He was interviewed on that day. As per settlement dated 17-11-87, temporary employees working more than 30 days during 1-1-1975 to 31-7-88 are eligible for appointment as regular employee. That he had worked for 158 days. Workman was called for interview on 22-9-89. After interview on 22-9-89, he was engaged. He was working as messenger from 5-2-97. In March 97, for working on computer in night, he was assigned duty, he was paid Rs. 1000/- for it. His services were terminated on 11-12-98. Cheque of Rs. 2160/- was given to him towards compensation. On 8-8-01, he was paid bonus Rs. 1503/-. During 1997-98, he worked for 429 days. That other temporary employees Santosh Mishra, Rajkumar Rai, Sanjay Babulkar, Vinodmangal Singh, Rajkumar Mitai, Raju Solanki, Manoj Ingle were appointed having less working days than him. He continuously worked 300 days during 5-1-97 to 11-12-98. His services are terminated illegally. 2nd party has violated settlement dated 17-11-89. The act of management is punishable under section 29 of ID Act. On such grounds, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. Case of 2nd party is Shri Ram Nagwanshi is not competent to raise dispute as his services were terminated from SB of Indore. He has no authority to represent workman. Workman was engaged on daily wages on contract basis for 93 days during the period 1-1-1983 to 31-12-1983, 429 days in 1997-98. Workman was not continuously working. Management paid wages for the period of engagement. Workman had not completed 240 days continuous service during any of the year. As per ratio held in case of Secretary of State of Karnataka versus Umadevi and others, workman is not entitled to reinstatement. Workman was not selected after his interview. It is denied that workman was continuously working. As working days of workman were less than other temporary employees, he was not appointed. Workman was paid bonus Rs. 1503/-. As per settlement, candidates apply for absorption in response to the advertisement after interview were waitlisted in Category-A,B,C considering length of aggregate temporary service. As per settlement, permanent appointment was given against vacancies. Candidates whose turn could not come till 31-3-97, the wait list would be lapsed. 2nd party submits that workman was not entitled for reinstatement.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- (i) Whether the action of the management of Assistant General Manager, State Bank of India, Bhopal in terminating the services of Shri Harishankar Saxena w.e.f. 11-12-98 instead of regularizing him is justified? In Negative
- (ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

5. Workman has not adduced his evidence to substantiate his claim. Evidence of workman was closed on 21-3-2011 as his representative submitted not to adduce evidence of workman.

6. Management filed affidavit of evidence of witness Shri Yogesh Vijaywarge shown 93 days working days of workman during May 83 to August 83. 429 working days of workman during 1997-98. That workman had not completed 240 days continuous service. Workman was paid compensation Rs. 2160/-.

7. Management's witness in his cross examination says he was not working in MG Road branch in 1983. Any selection process was not followed before engaging workman. Permission of Controlling Authority was not taken. Appointment letter was not given to workman. Attendance register was not maintained. During 1997-98, workman was allowed to work as per settlement. Public notice exhibit W-1 is admitted by management's witness. Management's witness denies that workman was interviewed in 1989. His name was not included in select list. He claims ignorance at what rate workman was paid wages. Documents regarding payment of compensation is not produced. Management's witness was unable to tell working days of workman during the year. He was unable to tell whether workman was paid bonus. Retrenchment notice was not issued. List of daily wage employees was not displayed. The details of working days of workman is not produced in the case. Name of contractor is not known to him. 2nd party has not produced select list. Working days of workman are shown 93 in Exhibit W-2 in 1983. Interview call Exhibit W-3 is admitted by 2nd party. Evidence of management's witness is contrary to said admitted documents. As per Exhibit w-4, list of empanelled employees in subordinate cadre enclosed. However said list is not produced on record. As per Exhibit w-5, workman was interviewed in 1989. Therefore he was not called for interview in 1997. Exhibit W-6 reply filed before ALC clearly shows 93 working days of 1st party workman prior to 14-8-91. He was interviewed in 1989. Select list of 1989 is not produced on record. Exhibit M-1 is not in dispute between parties. The said settlement provides- employees completed 240 days temporary service during 1-7-75 – 270 days service in block of 36 calendar months after 1-7-75, the employees who have completed a minimum of 30 days temporary service in any

calendar year after 1-7-75 or a minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75 are given chance for permanent appointment in Bank service is likely to arise during 1987 to 1991. Other documents at Exhibit M-2 to M-5 are not in dispute. From documents discussed above, it is clear about working days of workman, he was also called for interview, select list is not produced by 2nd party shows that management has withhold material documents. If those documents would have produced, certainly would have supported claim of workman. Workman has illegally denied regularization after his interview in 1989. Reasons for termination are not shown. Seniority list of temporary employees was not displayed. Termination of workman is therefore in violation of Section 25-F,G of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

8. **Point No.2-** Termination of workman is illegal as per my finding in Point No.1. he was denied regularization after his interview in 1989, select list of 1989 is not produced. The question whether workman is entitled for reinstatement with backwages. Workman has not examined himself in support of his claim, therefore his claim for backwages cannot be allowed. Workman is entitled to reinstatement without backwages. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management of Assistant General Manager, State Bank of India, Bhopal in terminating the services of Shri Harishankar Saxena w.e.f. 11-12-98 instead of regularizing him is not proper and legal.
- (2) 2nd party is directed to reinstate workman but without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2115.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टैंडर्ड मर्केटाइल कंपनी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पटना के पंचाट [संदर्भ संख्या 05(सी)/2010] को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2015 को प्राप्त हुआ था।

[सं. एल-29011/8/2010-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th October, 2015

S.O. 2115.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 05(C)/2010]

of the Industrial Tribunal/Labour Court, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Standard Mercantile Company and their workman, which was received by the Central Government on 23-10-2015.

[No. L-29011/8/2010-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No.:- 05 (C) of 2010

Between :

M/S Standard Mercantile Company,
23-A, Netaji Subash Marg, 2nd Floor,
Room No. 2, Kolkata-1

and

Their workman represented by
The General Secretary,
Mangalhat Khadan Mazdoor Sangh,
Rajmahal, Distt. Sahibganj.

For the management : Sri Alok Kumar Sinha,
Advocate
Sri Rakesh Kumar Tiwary,
Advocate

For the workman : Sri Sunil Kumar Singh,
(Vice- President of Mangalhat
Khadan Mazdoor Sangh,
Rajmahal)

Present :

Bipin Dutta Pathak, Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, the 12th August, 2014.

By notification order No.- L-29011/8/2010-IR(M) New Delhi, dated- 10.08.2010 Govt. of India, Bharat Sarkar Ministry of Labour/Shram Mantralaya, New Delhi referred under clause (d) of sub-section (1) and sub-section (2A) section-10 of the Industrial Dispute Act, 1947 (hereinafter to be referred to as 'the Act') the following dispute between M/s. Standard Mercantile Company, 23-A, Netaji Subash Marg, 2nd Floor, Room No. 2, Kolkata-1 and Their workman represented by The General Secretary, Mangal Hat Khadan Mazdoor Sangh, Rajmahal, Distt. Sahibganj. for adjudication to the Industrial Tribunal, Patna.

SCHEDULE

“Whether the declaration of the lockout w.e.f 8/1/2010 by the management of Standard Mercantile Company (Mining Division) Private Limited,

Rajmahal, Distt. Sahibganj (Jharkhand) is legal and justified? What relief the workman are entitled to and from which date?”

2. Statement of claim on behalf of the workman has been filed on 23.11.2010 stating therein that declaration of the lock-out w.e.f 06.01.2010 by the management vide its notice dated- 05.01.2010 is totally unwarranted and illegal and this is deliberate malicious act of the management to avoid financial liability imposed on the management of all claim cases of arrear amounting to Rs. 9,60,000/- (Rs. Nine Lakhs Sixty Thousand) only and workman compensation amounting of Rs. 2,27,000/- (Rs. Two Lakhs Twenty Seven Thousand) only. Management by declaring the illegal lock-out tried to avoid and delay the payment of compensation of lock out of the handicapped workman Majid Sheik who became handicapped in an accident during his duty in which he had fallen in the mining. The Dy. Labour Commissioner, Dumka had directed the management to pay compensation to the said workman. Lock-out was declared so that workman be involved in another problem for struggling livelihood. With a view of oppress the genuine claim of the workman and management lodged absolutely false criminal case and the workman were peacefully putting their legal grievances before the management in legal way. General Secretary of the union sent several letters to management and concerned authority of the government. The workmen are entitled to receive there respective arrears, bonus etc. from the management.

It appears that petition for amendment in the statement of claim as also been filed on 17.04.2012 stating therein that workman are being represented by their union- Mangal Hat Khadan Mazdoor Sangh, Rajmahal (Jharkhand). The said union has duly authorised there Vice-President, Sunil Kumar Singh, to take steps in the present case on behalf of the workman but the statement of claim dated-23.11.2010 has been filed by one of the workman namely Bhikhan Ghosh. The statement of claim dated-23.11.2010 was verified by Sunil Kumar Singh.

Written statement has been filed on behalf of the management therein that the terms of reference for adjudication is—

“Whether the declaration of the lockout w.e.f 8/1/2010 by the management of Standard Mercantile Company (Mining Division) Private Limited, Rajmahal, Distt. Sahibganj (Jharkhand) is legal and justified? What relief the workman are entitled to and from which date?”

It has stated that reference is not in accordance with law. Preliminary objection petition has been raised that the dispute sent for adjudication did not constitute “Industrial Dispute” as on the date of reference as it lacked espousal by recognized union of workman or support of substantial number of workmen, employed with the

management. It has not been stated that dispute was raised by any recognized union. Order of reference is illegal was not an Industrial Dispute. This tribunal will have no jurisdiction to entertain and decide the same on merit under the provisions of the Industrial Dispute Act, 1942. The statement of claim have not been filed by the recognized union. There is no authorization in favour of Sri Bhikhan Ghosh by majority of workmen.

The another objection is that matter of reference is already covered by a bipartite settlement between the management and recognized union entered on 27.02.2010 and hence the same can not be subject of an Industrial Dispute. Pursuant to illegal strike of the workman from 03.01.2010, the management had declared lock out from 06.01.2010 which continued till 02.03.2010. During the period of lock out vast majority of workers approached the management with a view to resolve the dispute and after having extensive negotiation and talk all the parties entered to a bilateral settlement on 27.02.2010. Lock out was amicably resolved by agreeing that management was right in enforcing “no work no pay” for the period of lock out but management will pay of Rs. 500/- (Rs. Five Hundred) only per worker as ex-gratia payment for the period of lock out and the workmen received the same. The subject matter of lock out referred by Central Government is totally illegal. A settlement can not be ignored. The management had open cast mine of “China clay and Silica sand” at Rajmahal. But union of the workman has been recognized namely (a) Rashtriya Quarries Khadan Mazdoor Sangh, (b) Jharkhand Shramik Sangh and (c) Mangal Hat Khadan Mazdoor Sangh. In the year-2009-10 there was dispute between the workers and management over several issues such as rate of payment of bonus for the year-2008-09 and 2009-10. Payment of arrears due to increase of minimum wages by 10 times etc. Negotiation was going on. All these led to a sudden strike by the workman on 03.01.2010. Sri B.K. Verma, General Manager cum Commercial Manager held a meeting in his residence on 04.01.2010 at 10.00 A.M. In the meeting Sri Nivaran Saha, Permit Mines Manager, Sri D.K.Das, Production Manager, Sri S. Ghosh, Accountant, Sri Satyawar Mahto, Head clerk and Sri Mangal Dev Sharma, Peon were present. All of sudden some of the workers led by Sri Bhikhan Ghosh, and others surrounded the residence of Sri B.K. Verma entered the house armed with lathis and chappals and started beating everyone. They targeted Sri D.K.Das production Manager whom they dragged out and beat him severely. They took out his money and broke his spectacles. On 04.01.2010 F.I.R was lodged with the local police station. As a result of the above riotous, disorderly and violent behaviour of some workers, the office staffs/employee refused to work in such atmosphere of fear. The strike was illegal. On 05.01.2010 again an emergency meeting was held of all the manager at the official residence of Sri B.K. Verma. It was decided that a lock out be declared from 06.01.2010. Notice was given to various authorities

of the Central Labour Department. Conciliation proceeding before Asstt. Labour Commissioner (Central) failed. Finally on 27.02.2010 a bipartite settlement was reached between the management and two recognized unions. It has been prayed that present reference to be decided in favour of the management.

The rejoinder to said written statement of the management has been filed by Sri Sunil Kumar Singh of Mangal Hat Khadan Mazdoor Sangh. It has been stated that written statement filed by the management is totally unwarranted, misleading and beyond the facts and law. It has been stated that workmen are being represented through Mangal Hat Khadan Mazdoor Sangh, Rajmahal. The general secretary of the union namely D.Mihra has raised the genuine grievances of the workmen before the management times to time. Workman have never been represented by Rashtriya Quarries Khadan Mazdoor Sangh, and Jharkhand Shramik Sangh. There has never been bipartite settlement on the subject matter of reference. The workmen never reached on any settlement on 27.02.2010 as alleged by the management. The workman have never authorized the so called unions, namely, R.Q.K.M.S and J.S.S as referred by the management. The alleged settlement is forged and fabricated.

3. The petition of preliminary objection has been filed by the management on 07.07.2011.

4. Rejoinder 02.08.2011 to the said petition dt-07.07.2011 that preliminary objection has been filed by the union.

5. It appears that copy of the reference was forwarded to the General Secretary, Mangal Hat Khadan Mazdoor Sangh, Rajmahal, Dist- Sahibganj and the said union filed written statement and rejoinder to the written statement filed on behalf of the management on 12.05.2011 and also rejoinder to the preliminary objection dated- 07.07.2011 filed by the management. Written notes filed on 08.02.2012 on behalf of the workman but union was not present on 29.02.2012 from 06.09.2012. No one appeared on behalf of the workmen. Lastly on 07.04.2014 management witness namely Janardhan Kumar was examined. But no one appeared for cross-examination of this witness. On 08.07.2014 argument on behalf of the management was heard. On 15.07.2014 Written argument was filed on behalf of the management.

6. Management witness namely M.W-1 Janardhan Kumar has stated that he is acquainted with the case. This witness is personnel manager of M/S Standard Mercantile Company (Mechanical Division). He has stated that company has mines of “China Clay and Silica Sand” at Rajmahal, Dist.- Sahibganj is state of Jharkhand and head office situated at Patna. Further he has stated that on 2009.10 dispute was going between management and workmen for bonus and arrears of minimum wages. On 3rd January, 2010 all the workmen went on strike

without information to the management or Labour department. On 04.01.2010 a meeting was going at residence of Sri B.K.Verma, General Manager then some workmen arrived entered into the house, they abused and assaulted. Sri D.K.Das was dragged out of the house and was assaulted. F.I.R was lodged for this, which has been marked exhibit-M on 05.01.2010 emergent meeting was held at the residence of Sri B.K.Verma and mine was lock out from 06.01.2010. Copy of the notice of the lock out is Exts.- M/1, thereafter settlement was made between the management and workmen on 27.02.2010 which has been marked as Exts.- M/2. After settlement lock out was removed from 03.03.2010. Now the workmen has no complain and on the basis of compromise all the workmen were paid Rs. 500/- (Rs. Five Hundred) only each for lock out and ex-gratia. Workmen have received payment. Receipt has been marked as Exts.- M/3. Dispute for bonus has also been settled on 09.05.2010. Copy of which has been marked as Exts.- M/4.

7. Ext.- M is F.I.R dated -05.01.2010 by Mr Binod Kumar Verma, Manager. Exts.- M/1 notice of lock out given by General Manager. Exts.-M/2 is settlement dated- 27.02.2010. Exts.- M/3 is proof of payment and Exts.- M/4 is the settlement in respect of dispute for bonus for year 2008-09 and 2009-10.

8. Written statement has been filed on behalf of the management stating therein that no written statement has been filed on behalf of the workman. After hearing of objection of the management, tribunal *vide* order dated-17.04.2012 directed the workman to file fresh written statement but no written statement has been filed by the workman. No evidence was laid by the workman. Workman/ Union completely failed to prove their case.

9. It appears from record that copy of the reference was forwarded to General Secretary, Mangal Had Khadan Mazdoor Sangh who appeared in the case. It appears that workman has also filed some documents which are copy of the letter No. 561/2010 dated- 07.01.2010 and letter No.- 463/2010 dated-07.01.2010 dated- 07.01.2010 sent by the union to Asstt. Labaour Commissioner. There is also letter dated- 568 dated- 22.01.2010 in which it has been stated that more than a dozen cases are pending before Regional Labour Commissioner (Central) which has not been disposed of. A letter has been sent to the Labour Secretary, Govt. of India. This facts also been stated in letter 651/2010 dated- 23.01.2010. Since the matter under reference is pending before this tribunal but Mangal Hat Khadan Mazdoor Sangh has left to take step in he case since 06.09.2012. Though the notice was also sent to the union on 24.08.2013, 21.01.2013, in the said circumstances, I have no option but to answer the reference that now there is no dispute of the workman. In this case before tribunal. Hence award is answered as “ No Dispute Award ” accordingly.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2116.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लाईफ इंश्योरेंस कार्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, पटना के पंचाट [संदर्भ संख्या 09(सी)/2014] को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2015 को प्राप्त हुआ था।

[सं. एल-17012/50/2014-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th October, 2015

S.O. 2116.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 09(C)/2014] of the Industrial Tribunal/Labour Court, Patna now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 23-10-2015.

[No. L-17012/50/2014-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. 09 (C) of 2014

Between the management of the Sr. Divisional Manager, Life Insurance Corporation of India, Patna Divisional Office-1, Frazer Road, Patna (BIHAR)-800001 and their workman Sri Ranjeet Kumar S/O-Sri Alakh Niranjana Prasad Road No.-5, Gandhi Nagar, Biranbigha, Dehri-on-Sone, Rohtas-821301.

For the management : Sri Asish Kumar Asst. Admn. Officer (Legal), Divisional Office No.-1 Patna.

For the workman : Sri B. Prasad, Joint Convener of Coordination Committee of Trade Unions and Association.

Present :

Sri Bipin Dutta Pathak, Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated the 30th September, 2015

By the adjudication order No.- L-17012/50/2014-IR (M) dated- 05.08.2014 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1)

and sub-section (2A) of section-10 of the Industrial Disputes Act, 1947, (hereinafter to be referred to as 'the Act'), the following dispute between the management of The Sr. Divisional Manager, Life Insurance Corporation of India, Patna Divisional Office-1, Frazer Road, Patna-800001 and their workman Sri Ranjeet Kumar, for adjudication to this tribunal:-

“Whether the action of the management of LIC of India, Divisional Office Patna to terminate the service of Sri Ranjeet Kuamr w.e.f 01.02.2013 was valid? If not, what relief the workman is entitled for?”

2. Both parties appeared, workman filed their statement of claim and management filed their respective written statement.

3. In the statement of claim on behalf of the workman it has been stated that Ranjeet Kumar was appointed in the service of Life Insurance Corporation of India as Financial Services Executive (FSE) w.e.f 15.01.2008, he went in Training Programme from 15.01.2008. He was posted at Aurangabad Branch of LIC of India *vide* letter dated- 15.02.2008. He started working with utmost sincerely and ability. He was being paid Rs. 10000/- per month which was subsequently raised to @ Rs. 16000/- per month. His services was terminated w.e.f 01.02.2013 *vide* letter No. PDO-1/B & AC, dated- 06.02.2013. He was neither given any notice nor notice pay nor any retrenchment compensation. He worked for more than 240 days in 12 calendar months. He is covered under section-2(OO) of the I.D. Act, 1947. Management resorted to unfair labour practices as per section 25F (Schedule V) of the I.D. Act. He represented on 25.02.2013 but no positive step was taken by the management. Then he raised dispute before Regional Labour Commissioner (Central), Patna on 03.10.2013 thereafter on failure of conciliation matter was referred here.

4. Management filed statement of defence (written statement) it has been stated that reference is bad in law. Ranjeet Kumar failed to fulfill the minimum new business parameters as per LIC of India (Finance Services Executive) Schemes, 2007 which ultimately led to his termination in terms of clause 8 of his engagement. “The contract will be terminated forth with without giving any notice to you, in case you do not procure the stipulated minimum new business in two successive quarters.” It has been further stated that LIC of India (Staff) Regulations, 1960 will not be applicable. Letter of engagement has been filed. Financial Services Executive 2007, clause 23 provides for termination of contract if the FSE does not procure the stipulated new business. He failed to procure required new business norms in two successive quarter ending on 31.05.2012 and 31.08.2012 which will be evident to the chart annexed with the written statement. Claim of the workman has been denied. Workman cannot claim any advantage of working for more than 240 days in 12 calendar month.

5. Rejoinder on behalf of the workman to the statement of defence (written statement) of management has been filed.

6. One witness has been examined on behalf of the workman and one document Ext.-W has been proved by the workman.

W.W-1 is the workman Ranjeet Kumar himself. He has stated that he was working in LIC of India at Aurangabad on the post of Financial Services Executive. He was appointed after interview. He joined on 15.01.2008 at Patna thereafter he was posted at Aurangabad and he joined there. Initially he was paid Rs. 10000/- (Rs. Ten Thousand). At the time of termination his scale was Rs. 16700/- per month. Termination letter is dated- 6th February, 2013 and date of termination is 01.02.2013. As such he was terminated with retrospective effect. He was provided leave and leave under NI Act, CL and Medical leave.

After joining for period of three years his worked was satisfactory and as such his services were extended. At the time of termination his work in previous quarter was excess to the target which was 104.44 per cent. No notice or compensation was paid prior to his termination. He gave representation on 25.02.2013 which was not replied. Seven person who joined along with him are working. He claimed for reinstatement with back wages.

In cross-examination he stated that he is B.A (Hons.) with Economics. He was appointed as per appointment letter dated- 15.01.2008 which was read over by him. His appointment was governed by Financial Services Executive Scheme. His service was on contractual term. His appointment was not for a fixed period. His services was used to be extended. He has to fulfill minimum business. He did not fulfill business criteria from 01.03.2012 to 31.05.2012. But he had completed minimum business criteria from 01.06.2012 to 31.08.2012. Thereafter he has also fulfilled minimum business criteria from 01.09.2012 to 30.11.2012. He was removed from the service from 01.02.2013. It is necessary to give notice before termination due to non fulfillment of business criteria. After 31.08.2012 he was extended till 28.02.2013. His business was reviewed. He received salary for the work done after 31.08.2012.

14 persons were appointed along with him and about 7-8 persons are working. Some persons joined another places.

From evidence of this witness it appears that he worked till 22nd February, 2013 while date of his termination of 1st February, 2013. From Ext.-W it appears that (FSE) quarterly review indicate that for the quarter 01.03.2012 to 31.05.2012 achievement was 21.11%, for the quarter 01.06.2012 to 31.08.2012 achievement was 72.22%, for the quarter 01.09.2012 to 31.11.2012 achievement was 104.44%, while target with all the quarter was 90. He had also exceeded EFP 109.41% for the period 01.06.2012 to

31.08.2012 and 105.83% in the quarter 01.09.2012 to 30.11.2011.

7. Single witness M.W-1 has been examined on behalf of the management, who is Md. Sayeed Akhtar Khan, presently posted as Chief Manager (B&AC) Divisional Office-1 Patna. In his examination in chief on oath it has been stated that in terms of clause-8 of his engagement letter dated-15.02.2008, it has been stated that contract will be terminated forthwith without giving any notice to you in case you do not procure the stipulated minimum new business in two successive quarters. Engagement letter of Ranjeet Kumar has been exhibited as Ext.-M/1. Copy of LIC of India Financial Services Executive Scheme, 2007 has been marked as Ext.-M/2. It has been stated that Sri Ranjeet Kumar failed to procure the required new business norms in two successive quarter ending 31.05.2012 and 31.08.2012 which was far behind the target. Letter of business performance has been exhibited as Ext.-M/3 and chart of quarterly review dated 04.10.2012 has been marked as Ext.-M/4. Copy of note sheet dated-04.10.2012 regarding performance review of Sri Ranjeet Kumar has been exhibited as Ext.-M/5 and copy note sheet dated-24.12.2012 regarding performance review of FSE Sri Ranjeet Kumar has been marked as Ext.-M/6. Copy of E-mail dated-08.12.2012 of Secretary M/B & AC has been marked as Ext.-M/7. Copy of letter to Sri Ranjeet Kumar dated-06.02.2013 has been marked as Ext.-M/8. It has been stated that in terms of clause-8 of the engagement letter, Sri Ranjeet Kumar was not entitled to continue as Financial Service Executive and hence the central office authorities of the LIC of India did not extend his continuation as Financial Service Executive. Copy of representation of Sri Ranjeet Kumar dated-25.02.2013 has been marked as Ext.-M/9.

In cross-examination this witness has stated that he is acquainted with all the facts of this case.

Financial Service Executive post was implemented from 2007. Which was contractual. He is not acquainted with Ranjeet Kumar.

He stated that after seeing the file he may state monthly remuneration of Ranjeet Kumar who joined service in the year 2008. Some persons are working. He does not remember quarterly business of Ranjeet Kumar. Business of Ranjeet Kumar in quarterly ending on 31.05.2012 and 31.08.2012 was much less. So he was terminated. Further he stated that Ext.-W is business statement of Ranjeet Kumar for the period from 01.03.2012 to 28.02.2013. According to the this Exts business for the period 01.09.2012 to 31.11.2012 exceeded target 90 to 104.44% services of Ranjeet Kumar, who completed for four years was extended to five years. He could not say that prior to termination any notice or retrenchment compensation was given to Ranjeet Kumar or not. Ranjeet Kumar did not fulfill the target for two quarter in one year but thereafter

his work was satisfactory because he worked more in comparison of previous quarter. This fact was informed to head quarter and no letter was sent from there, so he used to work.

Ranjeet Kumar was terminated on 06.02.2013. Target was 90 for the quarter 01.09.2012 to 31.11.2012 and achievement was 104.44%. Number of life was 94 which was more than 90. Ranjeet Kumar worked more in comparison of preceeding quarter.

8. Ext.-M/1 is engagement as Financial Services Executive. He was appointed for a period of three years which was renewable at the sole discretion of the corporation subject to certain terms and conditions for another two years. It appears that in 1st quarter number of life was NIL FPI was fixed one lac shown in extended in consecutive quarter in 2nd year.

Ext.-M/2 is Financial Services Executive Scheme-2007 according to which engagement was purely on contractual basis.

Ext.-M/3 is business performance of Ranjeet Kumar as on 31.05.2012 and in which it has been stated by Branch Manager we would also like to inform that your 2nd quarter of 5th year is to end on 31.08.2012, and you must have made up your own target to complete not only the required business of this quarter but more and more to compensate the past quarter and to earn incentives also.

Ext.-M/4 is quarterly review of Ranjeet Kumar.

Ext.-M/5 is letter sent by manager B & AC to Sr. Divisional Manager stating with, he (Ranjeet Kumar) made good of short fall in NOL by obtaining Rs. 2,30,828/- (57.71%) growth in FPI over & above eligible FPI. It was stated to refer his case for continuation of next quarter of 5th years of his engagement.

Ext.-M/6 is also performance review of FSE of Ranjeet Kumar.

Ext.-M/7 it was informed that it was not found possible to accede to request as FSE's have not fulfilled the minimum criteria of business as per the scheme.

Ext.M/8 is discontinuation as FSE by letter dated-06.02.2013 Ranjeet Kumar.

Ext.-M/9 is the the representation of Ranjeet Kumar.

9. Written argument has been filed on behalf of the workman stating mainly facts and evidence of the case. Web copy of the decision 2011 SC of Devinder Singh Versus Municipal Council, Sanaur has been filed. This decision is not applicable in this case as the facts differ from the fact of this case. In the case reported case workman was doing working was clerical nature.

Next decision is also web copy of case of (2010) of Harjinder Singh Versus Punjab State Ware Housing Corporation in this case in lieu of reinstatement with 50%

backwages it was directed to pay Rs. 87582/- by way of compensation. This case award of Labour Court was resorted with cost.

10. In the written argument filed on behalf of the management, case of the workman and management and the evidence has been dealt. They have stated about exhibited which has been already dealt. Some decision has been filed on behalf of the management one of which is of the Hon'ble Supreme Court of India in U.P.State Brassware Corpn. Ltd. and Anr. Vs Udai Narain Pandey. In this case services of one staff Udai Narain Pandey was terminated on the expiry of his tenure. In this case respondent was appointed on daily wages in a project work to look after construction building. Due to binding of unit some regular staff and other staff were retrenched. Facts of this case differed from this case here because the present dispute before this tribunal as regard to fulfillment of target. Another case also referred is of Hon'ble Supreme Court of India in Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Ors, is also not applicable with the facts and circumstances of the case.

FINDINGS

11. It is important to note that in this case Ranjeet Kumar was appointed as Financial Services Executive (FSE) w.e.f 15.01.2008. Which is admitted by both the parties even none of the exhibits has been challenged. As per Ext.-W quarterly review from 01.03.2012 to 31.05.2012 was NOL achievement 21.11% which exceeded in the quarterly ending on 01.06.2012 to 31.08.2012 and NOL achievement was 72.22% similarly EFP achievement exceeded 109.41%. Further NOL achievement in quarter 01.09.2012 to 30.11.2012 was 104.44% and EFP achievement was 105.83%.

From engagement letter Ext.-M/1 it appears that number of life and eligible FPI was nil in the first quarter which subsequently was increasing. From Ext.-M/3 it appears that Branch Manager (B&AC) informed Ranjeet Kumar that 2nd quarter of 5th year is to end on 31.08.2012 and you must have made up your own target to complete not only the required business for this quarter but more and more to compensate the past quarter & to earn incentives also and it appears from Ext.-W that in the quarter ending on 31.08.2012 business of Ranjeet Kumar in number of life was 94 which was 104.44% and even EFP is achievement was 105.83%. As such he completed more than expectation in the quarter ending on 31.08.2012 which apparent from Ext.-M/4. Quarterly review of Ranjeet Kumar. It appears from Ext.-M/5 the branch manager informed to Senior Divisional Manager that Ranjeet Kumar is making good of such fall in NOL by obtaining 57.11% in growth in the EFPI. Over and above eligible EFPI so it was requested to refer his case for continuation of Mr. Ranjeet Kumar to the next quarter 5th years of his engagement but this improvement was not considered and this request was

turn down which appears Ext.-M/7 and Ext.-M/6 and improvement of Ranjeet Kumar and recommendation for continuation for 3rd quarter was not considered properly without assigning any reason of for the period of short fall he was terminated which is not just and proper. More over termination letter dated-06.02.2013 while termination is dated 01.02.2013 with retrospective effect which is bad in the eye of law. In this circumstances that the termination of Ranjeet Kumar was not valid.

It is hold that action of the management of LIC of India Divisional Office, Patna to terminate the service of Ranjeet Kumar w.e.f 01.02.2013 was not valid. In this circumstance the workman is entitled to reinstatement and with full back wages and award is accordingly is answered.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2117.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स चेन्नई पेट्रोलियम कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 115/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2015 को प्राप्त हुआ था।

[सं. एल-30011/23/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th October, 2015

S.O. 2117.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Chennai Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 23-10-2015.

[No. L-30011/23/2015-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT CHENNAI

Monday, the 12th October, 2015

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 115/2015

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Chennai Petroleum Corporation Ltd. and their workman]

BETWEEN:

The General Secretary : 1st Party/Petitioner Union
Chennai Petroleum
Employees' Union
CPCL Campus, Manali
Chennai-600068

AND

The General Manager : 2nd Party/Respondent
Chennai Petroleum
Corporation Ltd.
Manali, Chennai-600068

Appearance:

For the 1st Party/
Petitioner Union : Absent

For the 2nd Party/
Respondent : Ms. K. Premalata,
Authorized Representative

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-30011/23/2015-IR (M) dated 21.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the Management of Chennai Petroleum Corporation Ltd. regarding denial of OT payment to their employees is justifiable or not? If not, to what relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 115/2015 and issued notices to both sides. The Respondent has entered appearance through authorized representative.

3. Even though the petitioner has received notice, he did not enter appearance. In spite of his absence the matter was repeatedly posted for his filing Claim Statement. However, he failed to appear or file any statement.

4. The petitioner seems to be not interested in pursuing the dispute. In the absence of any material to substantiate the case of the petitioner, the reference is to be answered against him.

The reference is answered against the petitioner. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked :**On the Petitioner's side**

Ex.No.	Date	Description
		Nil

On the Management's side

Ex.No.	Date	Description
		Nil

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2118.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कुमार जी.सी. पाण्डेय एण्ड कं. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 264/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2015 को प्राप्त हुआ था।

[सं. एल-29012/36/1993-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th October, 2015

S.O. 2118.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 264/1994) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Kumar G.C. Pandey and Co. and their workman, which was received by the Central Government on 23-10-2015.

[No.L-29012/36/1993-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1) DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No. 264 of 1994

Employer in relation to the management of
M/s. G.C. Pandey & Co.

AND

Their workmen

Present :

Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : None
 For the Workman : None
 State : Jharkhand Industry : Stone Mines
 Dated : 8/10/2015

AWARD

By order No. L-29012/36/1993-IR (M), dated 11/08/1994 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/s. Kumar G.C Pandey (Quarry owner) in terminating the service of Shri Ram Prasad Banerjee and not taking him back in employment with full back wages is justified and legal? If not, to what relief the concerned workman is entitled?”

2. After receipt of the reference the parties are noticed, Though they took steps for certain dates, subsequently did not appears nor take any interest in the case. It is presumed that the disputes between parties have been resolved in the meantime, Hence No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 अक्टूबर, 2015

का.आ. 2119.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कुमार जी.सी. पाण्डेय एण्ड कं. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 263/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.10.2015 को प्राप्त हुआ था।

[सं. एल-29012/35/1993-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th October, 2015

S.O. 2119.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 263/1994) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Kumar G.C. Pandey and Co. and their workman, which was received by the Central Government on 23-10-2015.

[No. L-29012/35/1993-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
 INDUSTRIAL TRIBUNAL (NO.1) DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of
 I.D. Act, 1947

Reference: No. 263 of 1994

Employer in relation to the management of
 M/s. Kumar G.C. Pandey & Co.

AND

Their workmen

Present :

Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : None
 For the Workman : None
 State : Jharkhand Industry : Stone Mines
 Dated : 8/10/2015

AWARD

By Order No. L-29012/35/1993-IR (M), dated 11/08/1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/s. Kumar G.C. Pandey, Pakur in terminating the service and refusing to take back in employment with full back wages Shri Madhav Jha is justified ? If not, to what relief the workman is entitled?”

2. After receipt of the reference the parties are noticed, though they took steps for certain dates, subsequently did not appears nor take any interest in the case. It is presumed that the disputes between parties have been resolved in the meantime. Hence No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 अक्टूबर, 2015

का.आ. 2120.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 दिसम्बर, 2015 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है)

अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध मिजोरम राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्र. सं.	राजस्व ग्राम का नाम/क्षेत्र*	हदवस्त सं./होबली*	तहसील/तालुक*	जिला
1	2	3	4	5
1.	आइजॉल मुनिसिपल			आइजॉल

[सं. एस-38013/88/2015-एस.एस. I]

अजय कुमार, सहायक सचिव

New Delhi, the 30th October, 2015

S.O. 2120.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st December, 2015 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Mizoram namely :—

Sl. No.	Name of the Village Area*	Had Bast No./Habli*	Tehsil/ Taluk*	District
1.	Aizawl Municipal			Aizawl

[No. S-38013/88/2015-S.S.I]

AJAY KUMAR, Assistant Secy.

नई दिल्ली, 30 अक्टूबर, 2015

का.आ. 2121.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दानकुनी खरगपुर परियोजना राष्ट्रीय राजमार्ग-6 के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 14/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/10/2015 को प्राप्त हुआ था।

[सं. एल-42012/177/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 30th October, 2015

S.O. 2121.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Reference No. 14/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers

in relation to the management of the Dankuni Khargapur Project/N.H.-6 and their workmen, which was received by the Central Government on 27/10/2015.

[No. L-42012/177/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2014

Parties:

Employers in relation to the management of
Dankuni Khargapur Project/N.H. 6

AND

Their workmen

Present :

Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the : None
Management

On behalf of the : Mrs. Bratati Chakraborty,
Workmen Ld. Counsel.

State : West Bengal Industry : National Highways

Dated: 16th October, 2015.

AWARD

By Order No.L-42012/177/2013-IR(DU) dated 13.02.2014/18.02.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s Ashoka Dhankuni Kahrpagur Tollways Ltd. is justified by terminating the service of 3(Three) No. of workmen namely S/Sri Srimanta Maity, Srikanta Adgiri and Kanailal Pal is legal and or justified? If not, what relief the workmen are entitled to?”

2. Bereft of all unnecessary details, the case of the concerned workmen is as follows:

The concerned three workmen namely S/Shri Kanailal Pal, Srikanta Adgiri and Srimanta Maity were appointed as Assistant Cashiers on 01.02.2012, 01.03.2012 and 26.03.2012 respectively at a monthly salary of Rs. 7750/- each. After joining service they performed their duties continuously and uninterruptedly till 19.11.2012. Subsequently, on 20.11.2012 they were illegally terminated from the service on the allegation that they misappropriated the money of the Company. Accordingly, industrial dispute was raised by the concerned workmen against

such illegal termination of their service. Hence this reference.

3. The management/M/s. Ashoka Dankuni Kharagpur Tollways Ltd. has not contested the case inspite of service of notice. So, this reference is heard *ex parte*.

4. The concerned three workmen have examined themselves as the witnesses and proved four(4) documents viz. Exts. W-01 to W-04 in order to establish their case.

5. In this case the concerned workmen have specifically stated in their statements of claim that they were appointed as Assistant Cashiers on 01.02.2012, 01.03.2012 and 26.03.2012 respectively at a monthly salary of Rs.7750/= each and after their joining in service they worked continuously and uninterruptedly till 19.11.2012. The said statements of the workmen have been corroborated by the oral evidence of the witnesses. The termination letters dated 20.11.2012 issued by the management (Ext. W-02) do not go to show that there was any break of service in respect of any of the said workmen during the period of their service. On the contrary, the said letters go to show that after joining they worked continuously till termination of their service.

6. Accordingly, it appears that the workmen after their joining in service worked continuously for at least 240 days. So the concerned workmen were in continuous service as per the provision of Section 25B of the Industrial Disputes Act, 1947.

7. From the statements of claim which corroborate oral evidence of the witnesses, it further appears that at the time of their termination one month's notice in writing had not been given to the workmen in compliance with the provision of Section 25F of the Act. Nor had any wages been paid in lieu of such notice. There is nothing on record to show that compensation was paid in compliance with the provision of Section 25F(b) of the Act.

8. Now from Ext. W-02 (termination letters dated 20.11.2012) it appears that the workmen were terminated from the service as the management lost its confidence in them for their alleged misappropriation of money of the Company. But there is nothing on record to show that before termination of their service domestic enquiry was held against them.

9. In this connection, it is desirable to mention the decision reported in (1985) 2 Supreme Court Cases 727 (paragraph 8) wherein it has been held that:

“It is difficult to agree with the findings of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of

the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the Management that termination for loss of confidence does not amount to a stigma has to be repelled. In our opinion it is not necessary to support our conclusion by reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect. ‘Retrenchment’ is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained.”

10. Considering the facts and circumstances of the case, evidence on record and the decision of the Hon'ble Supreme Court it appears that the termination of the workmen from the service by the management without any domestic enquiry and without any adherence to the provision of Section 25F of the Act, was neither proper nor justified.

11. From the decisions of the Hon'ble Supreme Court viz. 1978 Lab. I.C. 1667 and 2013(139) FLR 541 it appears that in case of illegal termination of service, reinstatement with continuity of service and back wages are normal rule.

12. Now it is to be considered whether or not the workmen are entitled to be reinstated in service. In this context it is necessary to refer to the decision reported in (1985) 2 Supreme Court Cases 727 (paragraph 9 and 10) wherein it has been held that:

“9. Ordinarily, when the order of termination is quashed a declaration follows that the workman continues to be in employment and is therefore, reinstated in service with full back wages as was held by this Court in *Hindustan Tin Works (Private) Ltd. V. Employees*. This Court held in *Jitendra Singh Rathor v. Shri Daidyanath Ayurved Bhawan Ltd.* that under Section 11-A of the Act advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to circumstances of the case. In *Hindustan Steels Ltd., Rourkela v. A.K. Roy*, this Court has held that the Labour Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case make reinstatement inexpedient or improper. In

this case it has been the stand of the respondent that the Management had lost confidence in the appellant and there has been some pleading about the importance of the role of confidence in the business set-up of the respondent. Without examining the tenability of the stand on loss of confidence as a defence to reinstatement and accepting the allegations advanced by the respondent that there has been loss of confidence, we are of the view that while the termination of service of the appellant is held to be bad, he may not be reinstated in service. On the other hand he should be adequately compensated.

10. The quantum of compensation has now to be ascertained. Ordinarily, the appellant would have gone back into service with full back wages. Admittedly he has been out of employment from March 1974. If he had gone back into service he would have been entitled to back wages of a little more than 11 years. In computing compensation this aspect has to be kept in view. If he was restored to service he would have been assured of employment for a further term of years. Keeping this as also other relevant aspects in view, we quantify the compensation payable to the appellant at Rs. 2 lacs. In almost similar circumstances in respect of two employees working under the Lufthansa German Airlines, compensation of Rs. 2 lacs for each worker was fixed by this Court in Civil Appeal No. 650 of 1982 disposed of by us on April 9, 1985. Counsel for the appellant has undertaken to file a statement showing the spread-over of the compensation from the date of the order of termination of service till the end of the present financial year, within a week from today. After the statement is filed the same be placed for further directions.”

13. It has already been discussed that the management lost its confidence in the workmen for their alleged misappropriation of money of the Company. Though the allegation of loss of confidence has not been established by any domestic enquiry, yet in the pleadings of the parties there is inkling of loss of confidence of the management for any reason whatsoever. In such circumstances it will not be expedient to reinstate the workman against the will of the management and in such cases adequate compensation would be an alternative to reinstatement. And in coming to this decision this Tribunal is fortified by the decision of the Hon'ble Supreme Court as already referred to in paragraph 12 above.

14. Now the question arises as to what would be the just and proper amount of compensation. In this regard the foregoing decisions of the Hon'ble Supreme Court as mentioned in paragraph 12 of this Award may be taken as a guideline.

15. There is pecuniary loss as well as non-pecuniary loss. Non-pecuniary loss i.e., sufferings, loss of earnings for the rest of the life, non-performance of the obligation towards the family cannot be measured in terms of money. So by applying the rule of thumb the total compensation for pecuniary and non-pecuniary loss is fixed at Rs.2,00,000/= (Rupees two lac) only.

16. The instant order of reference is accordingly answered in the negative. Each of the concerned three workmen are entitled to get compensation of Rs.2,00,000/- (Rupees two lac).

17. Award is passed accordingly.

Dated, Kolkata,
The 16th October, 2015

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 2 नवम्बर, 2015

का.आ. 2122.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट मास्टर जनरल, कोयंबतूर और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 89/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-40012/31/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd November, 2015

S.O. 2122.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 89/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Post Master General, Coimbatore and Others and their workman, which was received by the Central Government on 29/10/2015.

[No. L-40012/31/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 14th October, 2015

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 89/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Post Master General and Two Others and their workman]

BETWEEN:

Sri J. Sivakumar : 1st Party/Petitioner
AND

1. The Post Master General : 2nd Party/1st
Western Region (TN) Respondent
Coimbatore-641002
2. The Senior Superintendent : 2nd Party/2nd
of Post Offices, Respondent
Salem East Division
Salem-636001
3. The Sub-Divisional Inspector : 2nd Party/3rd
Attur Postal Sub-Division, Respondent
Attur, Salem-636102

Appearance:

For the 1st Party/ : M/s R. Malaichamy,
Petitioner Advocate
For the 2nd Party/1st, : Mrs. K. Akhilandeswari,
2nd & 3rd Respondent ACGSC

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-40012/31/2014-IR (DU) dated 07.10.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Postal Authority i.e. Inspector of Posts, Attur-Salem District regarding the termination of the services of the petitioner Mr. J. Sivakumar, GDS/DA is justifiable or not? If not, to what relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 89/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The Extra Departmental Delivery Agent (now known as Gramin Dak Sevak Mail Deliverer) at Arasanatham Branch Office took long leave from 21.09.1998 and the Third Respondent appointed the petitioner as Extra Departmental Delivery Agent (EDDA) by memo dated 21.09.1998 on temporary basis. The petitioner worked in the post till the regular incumbent joined duty on 24.02.1999.

He again went on leave from 25.02.1999 and the petitioner was again appointed in his place by the Third Respondent. The petitioner was thus appointed by the Third Respondent from time to time and he had been discharging his duties with utmost satisfaction. The permanent incumbent went on long leave again and the Third Respondent appointed the petitioner in his place on provisional basis by order dated 01.01.2000. The petitioner had completed more than 3 years of service at Arasanatham B.O. The third Respondent regularized the service of the petitioner by order dated 01.03.2003 w.e.f. 04.09.2002. However, the appointment was cancelled by order dated 26.03.2005. The petitioner challenged this before the Central Administrative Tribunal (CAT) and the Tribunal gave a direction to consider the case of the petitioner. The authorities did not comply with the order. Similarly placed persons like the petitioner were appointed as GDS after including their names in the dovetailed list prepared in respect of those who had completed more than 240 days of work. This benefit was denied to the petitioner. The petitioner was entitled for regularization as per the old recruitment rules since he has put in nearly three years of service. By virtue of continuous service rendered the petitioner is entitled to protection of Section-25(F) of the Industrial Disputes Act. An order may be passed directing the Respondents to reinstate the petitioner in service with continuity of service, backwages and other attendant benefits.

4. The Respondents have filed a common Counter Statement contending as below:

When the regular incumbent of Arasanatham B.O. was placed under off-duty the petitioner was given appointment on temporary basis w.e.f. 21.09.1998. Subsequently, he was temporarily appointed for 3 months from 21.11.1998 and had worked upto 24.02.1999. The temporary appointment of the petitioner was terminated on 25.02.1999 when the regular incumbent joined duty. When the regular incumbent availed leave at different spells from 26.02.1999 the petitioner was nominated by him as the EDDA and this was approved by the Third Respondent. Subsequently, the petitioner was permitted to work on temporary basis from 01.09.1999 to 31.12.1999. When the regular incumbent was again placed on off-duty the petitioner was again provisionally engaged for 2 months from 01.01.2000 and he worked till 03.09.2000. After the regular incumbent was removed from service the provisional appointment of the petitioner was regularized by memo dated 04.09.2002, by the Third Respondent. But this was done without observing the recruitment procedure. After issuing notice to the petitioner and on hearing him, his appointment was cancelled by order dated 26.03.2005. The petitioner was relieved from the post on 30.03.2005. The petitioner moved the CAT, Chennai against this order. The Tribunal had directed to consider the application of the petitioner for the post as and when the

same was notified for being filled up. The petitioner was not selected for the post as he was not in the zone of consideration. Another candidate was selected. The application filed by the petitioner before the CAT against this order was dismissed. The maintenance of dovetailed list has been discontinued and the system is not in vogue now. The list was maintained only in respect of those who had worked for 240 days in the 2 years before 11.02.1988. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W24 and Ext.M1 to Ext.M3

6. The points for consideration are :

- (i) Whether termination of the service of the petitioner by the Third Respondent is justifiable?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

7. The petitioner who had worked as Extra Departmental Delivery Agent (now known as Gramin Dak Sevak Mail Deliverer) with the Respondents at Arasanatham Branch Post Office at different spells had been terminated from service by order dated 26.03.2005. It is not denied by the Respondents that the petitioner had started to work at the Branch from 21.09.1998 and had worked till 30.03.2005 at different spells. Initially he had started to work when the regular incumbent was under off-duty. He had continued in the post when the regular incumbent was on leave and subsequently he was again appointed when the man was dismissed from service. The appointment which was provisional in nature was regularized by the Third Respondent by order dated 11.03.2003 w.e.f. 04.09.2002. However, the Third respondent himself cancelled the appointment by order dated 26.03.2005 stating that the regularization is not in accordance with the rules.

8. Ext.W1 to Ext.W6 are the different orders appointing the petitioner in the Branch Office at Arasanatham. Ext.M3 is the order cancelling the appointment of the petitioner. Ext.M1 and Ext.M2 are the notices given to the petitioner to show cause for not cancelling the order.

9. The petitioner seems to have approached different forums against the cancellation of his appointment. Ext.W7 is the order of CAT, Madras Bench in which the Tribunal directed the Respondents, the Postal Department authorities, to consider the application of the petitioner for the post of EDMC as and when the same was notified for being filled-up. It was further directed that the applicant's case shall be considered with reference to the rules as well as procedure, if any. It was further stated that if relaxation is required the same is to be deemed to have been ordered by the Tribunal in so far as age qualification alone was concerned. Regarding other qualifications they

were to be considered objectively and the petition disposed of. This was to be done within a period of 6 months. The petitioner had then approached the CAT again alleging contempt by the Respondents. However, this was dismissed, on the ground of delay, as seen from Ext.W8. The petitioner approached the Hon'ble High Court of Madras challenging the order of dismissal and the order is marked as Ext.W9. It is seen from the order that the grievance of the petitioner was on account of the alleged disobedience of the postal authorities to the order of CAT. The Writ Petition was disposed observing that the contempt petition was in time. He again approached the CAT armed with the order of the High Court. This time the contempt petition was dismissed considering it on merits as the postal authorities had already considered the application of the petitioner as directed by the Tribunal, though the same was rejected. The petitioner later applied to the Senior Superintendent of Post Offices (Ext.W11) to include his name in the dovetailed list for considering appointment against the regular vacant post subject to the outcome of the Special Leave Petition pending before the Supreme Court. He gave such representation (Ext.W13) to the Post Master General also. Since he did not receive any response, he filed application before the CAT, Chennai claiming the relief of inclusion of his name in dovetailed list. By Ext.W16 order, the CAT directed the Post Master General to consider and dispose of the representation of the petitioner in accordance with law within a specified period. As per the direction, a decision was taken, as seen from Ext.W17. The Post Master General stated that the dovetailed list was prepared in respect of those who have worked for 240 days in 2 years before 11.02.1988 and as the petitioner had worked only between 01.01.2000 and 26.03.2005 the question of inclusion of his name in the dovetailed list does not arise. He further stated that as case is already pending before the Supreme Court on the issue, inclusion of name of the petitioner in the list would be viewed as contempt of court. Thus, the request of the petitioner to include his name in the dovetailed list was rejected. It is subsequently the petitioner has raised the dispute claiming that he has worked for more than 240 days continuously and he is entitled to be reinstated in service.

10. As could be seen, the appointment of the petitioner was once regularized. But subsequently the same was cancelled stating that the regularization is not in accordance with the rules prevalent. The counsel for the petitioner has referred to the decision of the Division Bench of Madras High Court in support of his argument that termination is not justified. The Division Bench had disposed of several writ petitions including WP No. 5026/03 filed by the Superintendent of Post Offices in which issues akin to that of the petitioner's case were considered.

11. As in the present case, Suguna one of the Writ Petitioners in the batch of cases referred to above was

appointed on temporary basis in March 1998. Her period was extended later and she had worked in the Respondent Department till November 1998. The temporary appointment was terminated consequent to the selection of another person after notification, and considering the applications. Suguna approached the Central Administrative Tribunal challenging the selection of another person but the application filed by her was dismissed. She then filed another application to include her name in the dovetailed list based on her temporary service. This was disposed with a direction to consider her request. The Post Master General, as directed by the Tribunal considered her request and found that she is not eligible to be considered in the dovetailed list. She approached the Central Administrative Tribunal again and the Tribunal directed the Respondent to include her name in the dovetailed list. It was challenging this, the Respondent has filed Writ Petition before the Hon'ble High Court of Madras. The Hon'ble High Court considered the scheme framed in Kumar Vs. Union of India by the Administrative Tribunal and other facts. In Kumar's case the Tribunal had sought the stand of the Respondent and the Chief Post Master General, Tamil Nadu Circle had given a reply making its stand clear. It was stated in the reply that substitutes engaged before 11.02.1988 who have completed 240 days in any two years before 11.02.1998, substitutes engaged before 11.02.1988 but completed 240 days of service in any two years after 11.02.1988 and also provisional appointees who were appointed after 11.02.1988 and allowed to continue for 240 days in any two years as per judgment in Kumar's case were to be brought in the dovetailed list. The only persons who were omitted were substitutes appointed after 11.02.1988. It was observed by the Tribunal that in respect of provisional appointees, even those appointed after 11.02.1988 and allowed to continue for more than 240 days have also been placed in the dovetailed list and even otherwise the provisional appointees are entitled to have their names included in the list in view of the letter of the Department dated 18.05.1979 provided they have put in 3 years of service. It had again been observed by the Tribunal, referring to the argument advanced on behalf of the Postal Department that the scheme was intended only as a one-time measure and there is no question of applying the scheme after rules for Postal Gramin Dak Sevak in 2001 has been framed and that apprehension expressed that including such persons would open a flood gate of such cases is without basis and that the department is liable to extend the benefit of the scheme until the last eligible casual labourer, full time and part time EDA/GDS (Provisional Appointee or Substitute or Outsiders) is absorbed against the existing and future vacancies of GDA/GDS. The High Court concurred with the view expressed by the Tribunal and dismissed the Writ Petition filed by the Department.

12. When the regular incumbent was put under off duty the petitioner was appointed on provisional basis by order dated 01.01.2000. His appointment was regularized by order dated 01/03.2003 w.e.f. 04.09.2002. Subsequently, the Inspector of Posts felt that the regularization is not in accordance with the rules and terminated him from service. By then he had completed more than 3 years in the post of EDDA at Arasanatham Branch Post Office. So the petitioner's case squarely comes under the criteria prescribed by the Department itself. In its reply the PMG has told the Tribunal that the provisional appointees who are appointed after 11.02.1988 and allowed to continue for 240 days in any two years also are eligible to be brought in the dovetailed list. Even otherwise the provisional appointees are entitled to have their names included in the list on the basis of letter of the department dated 18.05.1979. By the time the petitioner was terminated from service he had completed more than 3 years of service. The Postal Department had turned down the request of the petitioner to be included in the dovetailed list only on the basis that he is not from the particular zone. When the petitioner was engaged this was not considered by the department. Apart from that the Administrative Tribunal does not seem to have made any difference regarding persons residing inside or outside the zone. No case is also seen put forth that persons will be excluded from the dovetailed list on the basis of the zone. When this aspect is taken into account the petitioner was all the more entitled to be included in the dovetailed list.

13. The facts of the present case are almost in primateria with that of facts of the Suguna's case. Suguna was appointed on 04.03.1998 on temporary basis and continued upto 15.11.1998. In the present case the petitioner had initially been appointed on 21.09.1998 and had continued till 23.02.1999. When the regular incumbent joined on 24.02.1999 there was a gap in the service but he was again appointed on the next day on 25.02.1999 and continued under different orders. His provisional appointment from 01.01.2000 was regularized and he continued till 30.03.2005.

14. Even though the petitioner had approached the Administrative Tribunal and other forums for redressal of his grievance his case was not considered on merits. The Tribunal had only given a direction to consider his application and the department had wrongly refused to include his name in the dovetailed list. The petitioner was sent away from service after he was regularized and had completed more than 3 years in service. A farce of an enquiry is seen conducted in which the petitioner was asked to state under which rules he had been engaged. It is the department that had engaged him. It should have better known the manner in which the petitioner was appointed. If the petitioner was included in the list on his request he would have entered the service long ago. The

petitioner is eligible to appointed in the service of the Respondent.

15. Accordingly an order is passed as below:

The Respondents are directed to appoint the petitioner in service in the vacancy that arises immediately after completion of one month of publication of the award.

The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/ : WW1, Sri J. Sivakumar
Petitioner

For the 2nd Party/ : MW1, Sri T. Venkatesan
Management

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
Ext.W1	21.09.1998	Order of Appointment
Ext.W2	21.07.1999	Order of 2nd Respondent
Ext.W3	15.12.1999	Order of 3rd Respondent
Ext.W4	21.12.1999	Order of 2nd Respondent
Ext.W5	01.01.2000	Order of 3rd Respondent
Ext.W6	01.03.2003	Order of 3rd Respondent
Ext.W7	04.05.2006	Order in OA No. 324 of 2005
Ext.W8	19.03.2008	Order in MA No. 92 of 2008
Ext.W9	08.09.2008	Order in WP No. 20996 of 2008
Ext.W10	09.07.2008	Order in CA 12 of 2008 in OA No. 324 of 2005
Ext.W11	11.06.2010	Representation
Ext.W12	13.07.2010	Representation
Ext.W13	17.09.2010	Representation
Ext.W14	19.12.2010	Original Application No. 1542 of 2010
Ext.W15	—	Reply by 2nd Respondent
Ext.W16	22.12.2010	Order in OA No. 1542 of 2010
Ext.W17	18.02.2011	Order of 1st Respondent
Ext.W18	25.05.2013	Claim Petition
Ext.W19	01.07.2013	Reply to ALC
Ext.W20	15.07.2013	Representation by K. Murugesan
Ext.W21	29.10.2013	Rejoinder by the Petitioner
Ext.W22	24.05.2014	Letter by the Petitioner

Ext.W23 24.05.2014 Rejoinder by the petitioner to reply the Claim Petition

Ext.W24 13.08.2014 Order of the Assistant Labour Commissioner (Central)

On the Management's side

Ex.No.	Date	Description
Ext.M1	09.02.2005	Letter No. DR/C/177 dated 09.02.2005 from 2nd Respondent to Petitioner
Ext.M2	25.11.2004	Letter No. GDSMD/MC Arasanatham dated 25.11.2004 from 3rd Respondent
Ext.M3	26.03.2005	Letter No. 362/GDSMD/MC/ Arasanatham dated 26.03.2005 from 3rd Respondent

नई दिल्ली, 2 नवम्बर, 2015

का.आ. 2123.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गौतम जासूसी और सुरक्षा सेवाओं, पुडुचेरी और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 114/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-42012/143/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd November, 2015

S.O. 2123.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 114/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Gautham Detective and Security Services and Others and their workman, which was received by the Central Government on 29/10/2015.

[No. L-42012/143/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 16th October, 2015

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 114/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Gautham Detective & Security Services (P) Ltd. and Another and their workman]

BETWEEN:

Sri V. Murugan : 1st Party/Petitioner

AND

1. The Managing Director : 2nd Party/1st Respondent
M/s Gautham Detective &
Security Services (P) Ltd.,
No. 5, “K” Lane, VVP Nagar
Puducherry-605009
2. The Project Director : 2nd Party/2nd Respondent
National Highways
Authority of India
PIU No. 10, Govindasamy
Nagar, Vazhudhareddy Post,
Villupuram, Tamilnadu-605401

Appearances :

- For the 1st Party/ : M/s P. Chandrasekaran,
Petitioner Advocate
- For the 2nd Party/ : Set Ex-parte
1st Respondent
- For the 2nd Party/ : M/s B. Harikrishnan,
2nd Respondent Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/143/2014-IR (DU) dated 27.11.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the demand of the workman, Sri Murugan in seeking employment in the Office of National Highways Authority of India, Villupuram from where he was stopped without reason is legal and justified? If so, what relief the concerned workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 114/2014 and issued notices to both sides. Both sides have entered appearance through their counsel. The petitioner has filed Claim Statement and the Second Respondent Counter Statement. The First Respondent did not file any Counter Statement. Subsequently, the counsel for the First Respondent reported to have no instruction and the First Respondent was set ex-parte.

3. The averments in the Claim Statement filed by the petitioner are as below:

The petitioner was engaged as Peon in 2006 in the Office Project Implementation Unit of National Highways

Authority of (India (NHAI), Villupuram through a placement agency. He had been discharging his duties to the utmost satisfaction of his superior officers. Initially he had been receiving Rs. 3,000/- a month as salary. Subsequently, this was enhanced to Rs. 6,000/- a month. On 04.03.2011 he was paid Rs. 10,305/- as salary by the Security Administration. For the period from October 2008 to March 2011 the petitioner worked through M/s Ramesh Manpower Security Services. From April 2011 to July 2011 he worked through M/s Indian Security Organization. From August 2011 to April 2014 he worked through the First Respondent. Though salary fixed by the First Respondent was Rs. 13,872/-, he actually received Rs. 7,900/- only. The balance amount was paid to someone else. The petitioner had submitted a representation to the Respondents on 11.10.2014 seeking permanency in the NHAI. The same was not acceded to by the General Manager. The petitioner is entitled to be made permanent under Section-3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. The First Respondent has denied job to the petitioner from the month of April 2014. This action of the First Respondent is arbitrary and in violation of principles of natural justice. While terminating the service of the petitioner the Respondent did not give any notice, notice pay or compensation. The termination amounts to retrenchment. The petitioner is not responsible for the missing of documents in the Office of the Second Respondent. The petitioner is seen made a scapegoat. The petitioner is entitled to be reinstated as Peon in the service of the Second Respondent with full backwages, continuity of service and other benefits.

4. The Second Respondent has filed Counter Statement contending as below:

The NHAI is an autonomous agency of the Government of India. To augment its administrative functions the authority used to engage supporting staff, such as Clerks, typists, computer operator and Peon on short term contract through Security Services/Placement Agencies. The salary for short term contract employees are fixed by NHAI Headquarters, New Delhi as per the prevailing guidelines. Monthly bill will be raised as per contract against the manpower supplied by the Security Agency. The salary will be paid by the Agency after making statutory deduction towards Provident Fund, ESI, etc. there is no master-servant relationship between the petitioner and the Second Respondent. The Second Respondent never disbursed salary to the petitioner directly. The Second Respondent did not engage more than 20 workmen on contract basis on any day during 12 months preceding the Claim Statement. The provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 is not applicable to the case. The Second Respondent has entered into an agreement with the First Respondent under which the First

Respondent has agreed to deploy personnel to work as Computer Operator, Peon, Watchman, etc. in the Office at Villupuram. The First Respondent supplied the petitioner among others to work as Peon in the Office of the Second Respondent. His salary used to be paid by the First Respondent. Originally the petitioner was on the rolls of the Security service by name M/s Firstman Security Force, Trichy. Thereafter he was on the roll of other agencies. From August 2011 onwards he was on the rolls of the First Respondent. The First Respondent on investigation found the petitioner guilty of theft of documents and withdrew the petitioner from the premises of Second Respondent. The petitioner has indulged in malpractice and stealthily removed papers of correspondence from the Office of the Second Respondent. From 22.05.2014 the First Respondent did not depute the petitioner to work in the Office of the Second Respondent. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder in answer to the Counter Statement of the Second Respondent denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WWs 1 and 2 and documents marked as Ext.W1 to Ext.W15 and Ext.M1 and Ext.M2.

7. **The points for consideration are:**

(i) “Whether the petitioner is entitled to be reinstated in service of the Second Respondent as claimed by him?”

(ii) Whether the petitioner is entitled to any other relief?

The Points

8. Murugan, the petitioner was working in the National Highways Authority of India as Peon from October 2006 onwards. According to him he was denied job in the month of April 2014. He has stated in his Claim Statement that the Respondents are to be directed to reinstate him as Peon in the National Highways Authority of India at Villupuram with backwages, continuity of service and other benefits. The First Respondent is the Security Service through which the petitioner was employed. The Second Respondent is the Project Director of NHAI. The petitioner has not specified in the Claim Statement with which Respondent he is to be reinstated, though he has claimed that he should be taken back as Peon in NHAI at Villupuram.

9. It could be seen even from the Claim Statement that the petitioner was working through placement agencies. The very case of the Second Respondent who is the only contesting Respondent in the case is that the petitioner was engaged through placement agencies all along. According to the Second Respondent there was never employer-employee relationship between him and the petitioner. The monthly bill for the short term employees

used to be raised by the manpower agency as per the contract and it was the agency who was making payment to the petitioner and similar employees.

10. In the Claim Statement the petitioner has claimed that he was employed through different agencies. From October 2008 to March 2011, he was employed by one agency and from April 2011 to July 2011 through another agency. Thereafter the First Respondent had employed him. The very case of the Petitioner in the Claim Statement is that the First Respondent has denied job to him. In the Proof Affidavit filed by him also the petitioner has asserted that he was working through the placement agencies. During his cross-examination the petitioner would state that during the period from 2006 to 2008 his employment was not through any Security Service. However, he does not have such a case in his Claim Statement.

11. Even the documents produced on behalf of the petitioner would show that payment was made to him by the agency through which he was employed. Ext.W1 is the receipt of 2009 towards payment of salary, issued by the placement agency. Ext.W2 is another such receipt also of 2009. These receipts would suffice to show that the petitioner was not directly paid by the Second Respondent but only by the agency through which he was employed. In fact there is no case for the petitioner also that he was directly employed by the Second Respondent. In the absence of employer-employee relationship between the petitioner and Second Respondent the petitioner would not be entitled to be reinstated in the service of the Second Respondent.

12. There is a claim for the petitioner in the Claim Statement that he is entitled to be made permanent on the basis of Section-3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. It has been pointed out by the counsel for the Second Respondent that in the absence of employer-employee relationship the petitioner would not be entitled to make such a claim at all. The counsel has relied upon the decision of the Madras High Court in PRAKASH VS. SOMYAJI in Writ Petition No. 17389 of 1999 in this respect. In the above decision, it was held that to invoke Section-3 of the Tamil Nadu Act the relationship of master and servant must be subsisting at the time when the claim is made. This decision was rendered under the background that though the workman had completed 480 days in a period of 24 calendar months in the concerned industrial establishment there was no employer employee relationship at the time when the claim was made. The dictum is all the more relevant in the present case in so far as there was never any employer-employee relationship between the petitioner and the Second Respondent.

13. Even otherwise, as pointed out by the counsel for the Second Respondent, in view of Section-7 of Tamil Nadu Industrial Establishment (Conferment of Permanent Status

to Workman) Act, the petitioner will not be entitled to any relief. The section excludes workman employed in an industrial establishment engaged in the construction of buildings, bridges, roads, canals, dams or other construction work whether structural, mechanical or electrical, from the purview of the Act. The Second Respondent has specifically stated in the Counter Statement that it is engaged in the development, maintenance and management of National Highways. So the exemption clause is applicable to the NHAI. For this reason also the petitioner is not entitled to invoke Section-3 of the Tamil Nadu Act for his benefit. So the petitioner is not entitled to any relief against the Second Respondent.

14. The First Respondent in the case has remained ex-parte. Even from the Claim Statement and Proof Affidavit of the petitioner what could be deciphered is that the petitioner was employed by the First Respondent and not by the Second Respondent. He was working at the office of the Second Respondent at the instance of the First Respondent who engaged him. As could be seen from the Claim Statement itself it is the First Respondent who had denied work to him.

15. Though the First Respondent has not come forward to justify the act of the termination of the petitioner from service, the Second Respondent has advanced a case that some documents were missing from its office and on enquiry by the First Respondent the petitioner was found responsible for the same and it is accordingly the petitioner was taken away from the premises of the Second Respondent. The petitioner had denied this case in the Claim Statement as well as during his examination. Apart from what is stated in the Counter Statement there is nothing to justify the case advanced by the Second Respondent. There is nothing to show that any enquiry was conducted and the petitioner was terminated from service by the First Respondent on the basis of the report of enquiry. Apparently, the First Respondent has denied work to the petitioner. In the absence of any justification for the same the act of the First Respondent in terminating the service of the petitioner amounts to retrenchment. The petitioner was not given any notice, notice pay or compensation before he was sent away. The First Respondent is liable to reinstate the petitioner in service. Accordingly an order is passed as below:

16. The First Respondent is directed to reinstate the petitioner in service with 25% backwages within a month of publication of the Award. In case of default the amount will carry interest @ 7.5% from the date of the award.

The reference is answered accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri V. Murugan
WW2, Sri R. Varadharaju

For the 1st & 2nd Party/
Respondent : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	01.08.2009	Receipt for salary given by the petitioner
Ext.W2	01.12.2009	Receipt for salary given by the petitioner
Ext.W3	01.05.2014	Requisition sent by the petitioner for permanency
Ext.W4	05.05.2014	Disability Certificate issued to the petitioner
Ext.W6	23.08.2014	Reply furnished by NHAI to Thiru Varadharaju, father of the petitioner
Ext.W7	09.09.2014	Letter of the Asstt. Labour Commissioner, Puducherry
Ext.W8	16.09.2014	Order passed by the District Legal Services Authority closing the petition
Ext.W9	23.09.2014	Conciliation Proceedings
Ext.W10	29.09.2014	Letter sent by the Asstt. Labour Commissioner (Central) Puducherry
Ext.W11	01.12.2014	Letter sent by the Tamil Nadu Legal Services Authority to the Chairman
Ext.W12	10.12.2014	Statement of defence submitted by the NHAI to the Desk Officer
Ext.W13	12.12.2014	Notice issued by the Tribunal
Ext.W14	16.01.2015	Letter sent by the D.G.M. (NHAI) to the Project Office
Ext.W15	16.01.2015	Letter sent by the D.G.M. to the First Respondent

On the Management's side

Ex.No	Date	Description
Ext.M1	01.05.2014	English version of the letter of the petitioner for Permanency
Ext.M2	01.12.2014	English version of letter of Varadharaju.

नई दिल्ली, 2 नवम्बर, 2015

का.आ. 2124.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल इंस्टीट्यूट ऑफ शास्त्रीय तमिल, चेन्नई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 13/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

[सं. एल-42012/165/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd November, 2015

S.O. 2124.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 13/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Institute of Classical Tamil, Chennai and their workman, which was received by the Central Government on 29/10/2015.

[No.L-42012/165/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Tuesday, the 13th October, 2015

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 13/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Central Institute of Classical Tamil and their workman]

BETWEEN:

Smt. B. Kalpana : 1st Party/Petitioner

AND

The Registrar : 2nd Party/Respondent
Central Institute of
Classical Tamil
No. 44-44, LMV Building,
IRT Campus
100 Feet Road, Taramani
Chennai-600113

Appearance :

For the 1st Party/ : M/s T. Sundaravadanam,
Petitioner Advocates

For the 2nd Party/ : M/s R. Parthiban, Advocates
Respondent

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-42012/165/2013-IR(DU) dated 25.02.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the management of Central Institute of Classical Tamil, Chennai in terminating the service of Smt. B. Kalpana, Lower Division Clerk is legal and justified? If not to what relief the concerned workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 13/2014 and issued notice to both sides. Both sides have entered appearance through their counsel and filed claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the Central Institute of Classical Tamil, Mysore as Data Input Operator in the Project Critical Edition of Ancient Tamil Classics on 31.12.2007. She was given daily wages at the rate of Rs. 200/- and also honorarium of Rs. 75/- per day. The petitioner was transferred to Chennai on 19.05.2008. She was promoted as Lower Division Clerk and given consolidated payment of Rs. 12,588/- w.e.f. 01.04.2010. She worked from 07.01.2008 to 27.03.2011 continuously for three years. She applied for Maternity Leave for the period from 28.03.2011 to 30.06.2011, alongwith Medical Certificate. The petitioner gave birth to a child on 05.05.2011. Because of the illness of the child she applied for extension of leave upto 30.11.2011. After expiry of this period she went to the Respondent Institution for joining duty and reported to the Registrar. But the Registrar refused to permit her to join duty. She was told that her services are terminated. She issued lawyer notice to the Respondent and received a reply that her services are on daily remuneration basis and there is no provision to take Maternity Leave. The dispute is raised accordingly. An order may be passed directing the Respondent to reinstate the petitioner in service with backwages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner had approached the Labour Commissioner claiming that her contract was terminated

and Maternity Leave was not sanctioned to her. The contract of the petitioner had ended on 31.03.2011. No fresh contract was issued after this. The petitioner had been engaged on temporary basis. There was no requirement of continuing the service of the petitioner as she had been appointed on short-term project. The petitioner had joined the temporary position giving false declaration that she had completed 12th standard. The engagements of the petitioner was not by proper authority or committee for appointment. It was only against a particular project. Regular posts for the Respondent Institute were sanctioned only during June 2010 and Recruitment Rules were framed and approved by the Ministry during September, 2011 only. The Governing Board of the institute in meeting held in October 2012 instructed the Institute to restrict the temporary positions operated to the sanctioned strength. No appointments were made thereafter. Even in temporary positions the strength of the temporary persons engaged was brought down progressively to 52 from more than 100 that was prevailing in March 2011. The petitioner is not entitled to any relief.

5. Subsequently the Respondent had filed additional Counter Statement contending as below:

The Respondent Institution was started in the year 2008 on the basis of the scheme framed by the Central Government in order to promote, propagate and preserve the Tamil language. The purpose of the Respondent institute is to do research works relating to the classical phase of Tamil. The objective of the Institute includes organizing and offering educational and research programs at Post Graduate Level in classical Tamil leading to Ph.D and Post Doctoral Awards, supporting research projects received from Universities and established institutions and supporting such case studies as may be relevant to the disciplines mentioned, organizing national and international conferences, seminars and workshops and supporting similar efforts in Universities and established academic institutions, etc. In order to achieve the aims and objectives of the Institute several faculties have been established in the Institute. When the Institute was started the Central Government had not sanctioned permanent post and did not recruit any permanent employee. The post of Director is being held by additional charge and the Registrar who is working in the Institute is on deputation. The Respondent Institute is a research Institute and is mainly financed by Ministry of Human Resource Department of the Central Government. It is not directly or indirectly carrying on any trade or business. Its activities do not result in production or distribution of goods or service calculated to satisfy human wants and wishes. The materials that were made by the Respondent Institution produced out of research of ancient Tamil were occasionally published, but they have never been sold in public shops. The Respondent is not producing saleable

commercial materials at the market for any commercial value. The Institute is registered as an Autonomous Institution under Tamil Nadu Societies Registration Act. The activity carried on by the Respondent does not fall under the definition of Industry as given in Section-2(j) of Industrial Disputes Act. The application of the petitioner for Maternity Leave was received by the respondent only on 04.04.2011, after expiry of the period of contract. The appointment of the petitioner having been purely on contract basis, by efflux of time the appointment came to an end. The person holding such post can have no right to continue in the post. The case of the petitioner directly falls under Section-2(oo)(bb) of Industrial Disputes Act. The petitioner in any case is not entitled to any relief.

6. The evidence in the case consists of oral evidence of WWs 1 to 4 and MW1 and Ext.W1 to Ext.W42 and Ext.M1 to Ext.M16.

7. The points for consideration are:

- (i) Whether the action of the Respondent in terminating the service of the petitioner is legal and justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. Admittedly the petitioner has started working with the Central Institute of Classical Tamil as Data Input Operator on 31.12.2007. At that time the Institute was functioning from Mysore and the petitioner had been working there. When the Institute was shifted to Chennai the petitioner was brought to Chennai to work in the same position. Subsequently, she was given the position of Lower Division Clerk with a consolidated payment of Rs. 12,588/- Though the petitioner has stated in the Claim Statement that she was given promotion, her engagement as LDC is not termed as a promotion by the Respondent. While she was working as Data Input Operator the position of LDC seems to have been offered to her, as seen from Ext.M10. This document is to the effect that the selection committee has interviewed and selected the petitioner as Lower Division Clerk. According to the petitioner she has worked with the Respondent upto 27.03.2011. She is said to have applied for Maternity Leave for the period from 28.03.2011 to 30.06.2011 alongwith Medical Certificate. Subsequently extension of leave upto 30.11.2011 is said to have been sought for. According to the petitioner she had approached the Registrar of the Institute after 30.11.2011 to permit her to join duty but she was not allowed. On the other hand she was told that she was terminated from service.

9. According to the Respondent the engagement of the petitioner was project oriented and that also on contract basis. The stand of the Respondent is that the period of contract of the petitioner has expired on 30.06.2011 and thereafter the same was not renewed. It is

stated that the case of the petitioner will fall under Section-2(oo)(bb) of ID Act. It is the further case of the Respondent that in any case the Respondent is not an institution running any industry and therefore the dispute will not come under the purview of the ID Act.

10. The case that is attempted to be advanced on behalf of the petitioner is that she was illegally denied Maternity Leave by the Respondent. According to the petitioner she was under the impression that her application for Maternity Leave has been accepted and allowed by the Respondent. Only after she came back to the Institute to join duty after the period of leave had expired she came to know that it was not allowed. According to her, only when she approached the Institute to join duty on expiry of the period for leave she was told that her service is terminated.

11. The petitioner has given evidence as WW1 in terms of the Claim Statement. She has stated in her cross-examination that she has applied for Maternity Leave and it was accepted by the management also. According to her, the Management did not give any letter sanctioning the leave. Only oral sanction was given. According to her, after expiry of the leave she had rejoined on 01.12.2011 and leave was extended orally by Professor Ramaswamy, WW4.

12. WW2 was the Director of the Respondent institution at the time when the Counter Statement was filed. This witness had been summoned by the petitioner to depose on her behalf. This witness had no personal knowledge of the engagement of the petitioner or the alleged refusal of the Registrar to allow her to join duty. This witness has stated that the contract of the petitioner had ended on 31.03.2011 and that is why she was not allowed to join duty. She has further stated that the Maternity Leave application of the petitioner was received at the office on 04.04.2011 only. According to the witness, a note was seen made on the records that the petitioner is not eligible for leave.

13. WW3 another witness summoned by the petitioner was also in-charge of the Director of the Respondent Institution. He was there from 24.04.2015. This witness also asserted during examination that leave application of the petitioner was received at the office on 04.04.2011 only and since the period of contract was over there was no question of sanctioning the leave. The witness has stated that leave could not be granted to a person who is not an employee.

14. WW4 was the Professor of the Institute and was in-charge of the post of Dy. Director also. This witness had come to give evidence on behalf of the petitioner. According to this witness the petitioner had worked from 07.01.2008 to 27.03.2011 continuously for 3 years. She had applied for maternity leave from 28.03.2011 to 30.06.2011 and this was received by him as Officer-in-Charge of the Institution

and was forwarded to the Director. He has also stated in the affidavit that the petitioner has given a second leave application for 92 days from 01.07.2011 and a third one for 61 days on 01.10.2011.

15. Ext.W8 is the application for Maternity Leave dated 28.03.2011. The Respondent has produced the original application submitted by the petitioner at the Institute and this has been marked as Ext.W8A. The date of receipt of application shown in the document is 04.04.2011. However, the document does not contain any seal. It has been pointed out by the counsel for the Respondent that throughout there was no case for the petitioner that she has submitted the application on 28.03.2011 itself but only that her application is for Maternity Leave for the period of 3 months from 28.03.2011. WW4 has stated that he has received the application at the institute on 28.03.2011. However, he is not the authority to sanction the leave. He is said to have forwarded the application to the Director. But Ext.W8(A) which is apparently the application given by the petitioner does not contain anything to show that it was received at the office by him on 28.03.2011. The only date shown in the document is 04.04.2011.

16. As already stated the case of the Respondent is that by the time the application of the petitioner reached the office the period of her contract has expired and her service has come to an end by efflux of time. According to the Respondent there was no question of allowing the application since the petitioner has already ceased to be an employee of the institution. Ext.M10 is the document engaging the petitioner as Lower Division Clerk. The document specifies that the engagement is purely on temporary basis and is upto 31.03.2011 only. It further states that she will be entitled to special casual leave at the rate of 2.5 days for every completed month. She will not be allowed any Special Casual Leave at any time during the period of engagement. There is a further condition that the assignment can be terminated by the Institute authorities at any time without assigning any reason or prior notice. The petitioner had accepted the terms and conditions prescribed in Ext.M10 and has accepted the engagement as seen from Ext.M11. She has stated in it specifically that she undertakes to abide by the terms and conditions as stipulated. She has further stated that she has understood that the Institute reserves the right to engage her only for the period her expertise is needed.

17. The counsel for the Respondent has relied upon the decision in BHAVNAGAR MUNICIPAL CORPORATION VS. SALIMBHAI UMARBHAI MANSURI reported in 2013 14 SCC 456 to advance his argument that the case comes under Section-2(oo)(bb) of the Industrial Disputes Act. In the above case that the service of the workman was terminated on the expiry of the fixed period. The Apex Court has held that the contract of appointment consciously entered into by the employer and the employee

would indicate that the employment is short-lived and the same is liable to termination on the fixed period mentioned in the contract of appointment. Section-2(oo)(bb) states that if termination of the service of the workman is as a result of non-renewal of the contract between the employer and the workman on its expiry such contract being terminated under a stipulation in that behalf contained therein the same would not constitute retrenchment. In the present case the petitioner was bound by Ext.M10, she having acceded to it by Ext.M11. The period of her contract had expired on 31.03.2011. There is nothing to show that her application for leave was received at the office on 28.03.2011 or any date prior to 31.03.2011 on which date the contract was to expire. So it is to be presumed that service of the petitioner had ended on expiry of the period of contract on 31.03.2011 and she has ceased to be an employee of the Respondent Institute from that date.

18. Even assuming that the case of the petitioner that she had applied for Maternity Leave on 28.03.2011 and was entitled to continue in the Institute in spite of the specified period mentioned in the contract for employment she would not be entitled to any relief from this Tribunal for the reason that the Respondent institute is not an industry coming under Section-2(j) of the Industrial Disputes Act. In the additional Counter Statement the Respondent has specifically raised a contention that it is not an industry as defined in Section-2(j) of the Industrial Disputes Act. The Respondent has stated that the main object of the Institute is to do research works relating to the classical phase of Tamil and the Institute is fully engaged in research in documenting and preserving objects and documents relating to the classical phase of Tamil. The Memorandum of Association of the Institute which is registered under the Societies Registration Act of Tamil Nadu is produced by the Respondent. It is stated that several faculties are established in the Institute to achieve the aims and objectives. In spite of this, no posts were sanctioned for the Institute until the year 2010. Rules were framed for this still later.

19. MW1, the witness for the Respondent has stated about the nature of work done at the Institute. He has spoken about the aims and objects of the Institute also. He has stated that though some works are published, these are not sold in public shops but only during certain exhibitions, etc. WW4 also has stated that books published by the Institute will not be available in the shops. He has stated that the books in the Institution used to be sold in different exhibitions only. He deposed that the object of the Institute is dissemination of information about classical Tamil all through the world. Only those persons interested in Tamil would come and get the books from the Institution. Thus it is clear that publication of books by the Institute is only to achieve its aim and objectives. Only the materials

obtained at the Institute by way of research are published as books. They are not intended to gain any profit for the Institute.

20. The counsel for the Respondent has pointed out with reference to legal pronouncements that the Institute would not come under the definition of Industry in the above context. The counsel has referred to the decision of the Apex Court in *PHYSICAL RESEARCH LABORATORY Vs. K.G. SHARMA* reported in 1997 4 SCC 257 in support of his argument. The Physical Research Laboratory is an Institute coming under the Government of India, Department of Space engaged in pure research in space science. It was doing research in Astronomy and Astrophysics, Planetary Atmosphere and Aeronomy, Earth Sciences and Solar System Studies and Theoretical Physics. The Apex Court held that it is not directly or indirectly carrying on any trade or business and its activities do not result in production or distribution of goods or services calculated to satisfy human wants and wishes. The workman in the above case had raised Industrial Dispute questioning age of his retirement. The Labour Court has found that the workman is not entitled to any relief since Physical Research Laboratory is not an industry and this finding was upheld by the Apex Court. The counsel for the Respondent has drawn parallels from the decisions of several High Courts also in support of his argument. The Allahabad High Court has found in *GANESH CHANDRA SINGH Vs. UNION OF INDIA* reported in 1981 LAB I.C. 781 that National Sugar Institute is not an Industry. The Karnataka High Court has found in the decision in *VIJAY KUMARI PILLAI Vs. THE MANAGEMENT OF INDIAN INSTITUTE OF SCIENCE* reported in 2012 3 LLJ 627 that the Institute is not an Industry. The Madhya Pradesh High Court has found in *PROJECT DIRECTOR Vs. MAMTA SRIVASTAVA* reported in 2005 (4) MPHT 396 that Saksharta Mission and Adult Educational Program is not an Industry.

21. Apparently, the Respondent is an Institute conducting research on Classical Tamil. It is not doing anything with the object of making profit. Similar institutions were found to be not Industry by the Apex Court and different High Courts. The Respondent Institute also would not come under the definition of Industry. So in any case the petitioner would not be entitled to any relief on the basis that she is a workman coming under the Industrial Disputes Act. For this reason, in any case the petitioner is not entitled to any relief.

In view of my discussion above, the reference is answered against the petitioner. An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:			Ext.W14	11.04.2012	Representation made by the petitioner to the Secretary, HRD Department, New Delhi
For the 1st Party/ Petitioner	:	WW1, Smt. B. Kalpana WW2, Ms. V.G. Bhooma WW3, Prof. R. Gnanamoorthy WW4, Sri K. Ramaswamy	Ext.W15	12.04.2012	Representation made by the petitioner to the Chief Minister of Tamil Nadu
For the 2nd Party/ Management	:	MW1, Dr. M. Muthuvelu	Ext.W16	12.04.2012	Representation made by the petitioner to Commission for Scheduled Castes and Scheduled Tribes
Documents Marked:					
On the petitioner's side					
Ex.No.	Date	Description			
Ext.W1	26.06.2009	Community Certificate	Ext.W17	12.04.2012	Representation made by the petitioner to the Chief Minister of Tamil Nadu
Ext.W2	March 2003	10th Mark Statement			
Ext.W3	31.12.2007	Appointment Order issued by the Respondent Institution and ID Card issued by the Respondent	Ext.W18	16.04.2012	Representation made by the petitioner to Respondent Institution
Ext.W4	16.05.2008	Transfer Order issued to petitioner by the Respondent Institution	Ext.W19	19.04.2012	Communication from Tamil Development Department to the petitioner
Ext.W5	19.05.2008	Representation made by the petitioner to Respondent Institution	Ext.W20	02.05.2012	Representation made by the petitioner to the President of India
Ext.W6	12.03.2010	Promotion Order and pay revised order by the Respondent Institution	Ext.W21	09.05.2012	Communication from Commission for Scheduled Castes and Scheduled Tribes
Ext.W7	12.11.2010	Pay Revision Order by the Respondent Institution	Ext.W22	14.05.2012	Representation made by the petitioner to the Commission for Scheduled Castes and Scheduled Tribes
Ext.W8	28.03.2011	Representation made by the petitioner for Medical Leave for maternity	Ext.W23	14.05.2012	Representation made by the petitioner to the Prime Minister of India
Ext.W8(A)	28.03.2011	Leave application alongwith medical certificate received by the Respondent Institute on 04.04.2011 (original Leave application has been filed)	Ext.W24	09.06.2012	Representation made by the petitioner to the Respondent Institution and Others
Ext.W9	05.07.2011	Medical Certificate and advise to the petitioner	Ext.W25	09.06.2012	Legal notice sent by the petitioner to the Respondent Institution
Ext.W10	22.03.2012	Representation made by the petitioner to Respondent Institution	Ext.W26	12.06.2012	Representation made by the petitioner to the Commission for Scheduled Castes and Scheduled Tribes
Ext.W11	26.03.2012	Representation made by the petitioner to the Secretary, HRD Department, New Delhi	Ext.W27	12.06.2012	Representation made by the petitioner to the Chief Minister of Tamil Nadu
Ext.W12	26.03.2012	Representation made by the petitioner to the Governor of Tamil Nadu	Ext.W28	12.06.2012	Representation made by the petitioner to the Tamil Nadu Commission for Women
Ext.W13	10.04.2012	Representation made by the petitioner to the Secretary, HRD Department, New Delhi			

Ext.W29	15.06.2012	Representation made by the petitioner to the Secretary, HRD Department, New Delhi	Ext.M4	31.12.2007	Acceptance of the petitioner as Data Input Operator
Ext.W30	14.09.2012	Representation made by the petitioner to the Secretary, HRD Department, New Delhi	Ext.M5	04.01.2008	Copy of the Joining Report
Ext.W31	20.06.2012	Representation made by the petitioner to the Respondent Institution and Others	Ext.M6	25.06.2010	Letter from MHRD to the Respondents
Ext.W32	26.06.2012	Representation made by the petitioner to the Secretary, HRD Department, New Delhi	Ext.M7	19.08.2011	Copy of the letter from MHRD to the Respondent
Ext.W33	26.06.2012	Representation made by the petitioner to the National Commission for Women	Ext.M8	31.05.2007	Copy of the minimum qualifications for the post as Data Input Operator
Ext.W34	27.06.2012	Communication sent by the President of India	Ext.M9	16.05.2008	Petitioner and other staff were transferred to Chennai
Ext.W35	29.06.2012	Reply sent to the petitioner by the Respondent Institution	Ext.M10	12.03.2010	Engagement of the petitioner by the Respondent Institution on contract basis for a fixed period (01.04.2010 to 31.03.2011)
Ext.W36	07.05.2012	Communication sent to the Respondent Institution by Tamil Development Department	Ext.M11	01.04.2010	Accepting the terms and conditions, petitioner joined duty
Ext.W37	28.03.2013	Representation made by the petitioner to the Chief Secretary, Tamil Nadu and Others	Ext.M12	-	Extract of the Finance Committee of the Institute
Ext.W38	07.06.2013	Reply sent to the petitioner by the Respondent Institution	Ext.M13	04.07.2013	Representation made by the petitioner to ACL
Ext.W39	20.06.2013	Representation made by the petitioner to the President of India	Ext.M14	20.11.2013	Parawise comments submitted by the Respondent's Institute before ACL
Ext.W40	04.07.2013	Representation made by the petitioner to the Labour Department, Chennai	Ext.M15	28.11.2013	Conciliation Failure Report
Ext.W41	20.10.2010	Minutes of Governing Board	Ext.M16	21.01.2009	Memorandum of Association
Ext.W42	28.04.2011	Cumulative Physical achievements of the year 2010-2011			नई दिल्ली, 2 नवम्बर, 2015

On the Management's side

Ex.No.	Date	Description
Ext.M1	26.12.2007	Copy of the resume submitted by the petitioner
Ext.M2	-	Copy of the mark sheets submitted by the petitioner
Ext.M3	27.12.2007	Offer made by the Respondent to the petitioner as Data Input Operator

[सं. एल-42012/91/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd November, 2015

S.O. 2125.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 44/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation

का.आ. 2125.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मद्रास फर्टिलाइजर्स लिमिटेड, चेन्नई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 44/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/10/2015 को प्राप्त हुआ था।

to the management of the Madras Fertilizers Limited, Chennai and their workmen, which was received by the Central Government on 29/10/2015.

[No. L-42012/91/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Friday, the 16th October, 2015

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 44/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Madras Fertilizers Ltd. and their workman]

BETWEEN:

Sri K.R. Kumaran : 1st Party/Petitioner

AND

The Chairman-cum- : 2nd Party/Respondent
Managing Director
M/s Madras Fertilizers Ltd.
Post Bag No. 2
Manali, Chennai-600068

Appearance:

For the 1st Party/Petitioner : M/s K.M. Ramesh,
Advocates

For the 2nd Party/Respondent : M/s P. Chandrasekhar
& H. Rekha, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/91/2012-IR (DU) dated 19.05.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the action of the Management of Madras Fertilizers Ltd. in terminating Sri K.R. Kumaran from the service w.e.f. 29.08.2007 is legal and justified? If not, to what relief Sri Kumaran is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 44/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner are as below:

The Respondent is a Public Sector Undertaking and is controlled by the Ministry of Chemicals and Fertilizers of the Government of India. The petitioner joined the service of the Respondent on 07.09.1992 as Technical Assistant (Trainee). After completion of the training period he was appointed as technical Assistant in September 1994 and was posted to work in Production Plant Group. The petitioner was discharging his duties faithfully and efficiently. The last drawn salary of the petitioner is Rs. 17,000/-. The petitioner had applied for leave for 60 days on 28.02.2007. He attended duty after 03.03.2007. 4th and 5th of March were weekly off days. The leave application of the petitioner was not rejected till 03.03.2007. He availed the leave sought for by him from 06.03.2007. The petitioner had presumed that his leave has been granted. The petitioner submitted his resignation on 30.03.2007. On 13.04.2007 the Respondent belatedly issued a letter stating that the leave sought for by him has been refused and his resignation has not been accepted. The petitioner was directed to report for duty. The petitioner sent a letter to the Respondent on 07.05.2007 requesting to accept the resignation and relieve him from duty. Thereafter, the Respondent issued Charge Memo dated 30.05.2007 alleging that the petitioner has been absent from duty from 07.03.2007 without prior sanction of leave, he had gone abroad and failed to obtain permission from the competent authority before leaving the Headquarters, he had engaged himself in employment of others without proper relief and he had failed to follow the prescribed rules of the Company. In spite of the explanation submitted by the petitioner the Respondent had appointed an Enquiry Officer and conducted an enquiry. The Enquiry Officer had sent notice asking the petitioner to appear for enquiry to be held on 16.07.2007. On receipt of the said notice the petitioner sent a fax message requesting to postpone the enquiry. The enquiry was postponed to 31.07.2007. The enquiry seems to have been adjourned to 02.08.2007 on which date the petitioner was set ex-parte and the enquiry was concluded. Thereafter the Respondents sent a Show Cause Notice stating that the Management had accepted the report of the Enquiry Officer and the petitioner is to submit his explanation. As requested by the petitioner he was asked to appear on 21.08.2007. When the petitioner went to the Company he found that no enquiry was conducted in his presence. The petitioner sent a letter to the General Manager requesting to accept his resignation and relieve him from service. While the petitioner was awaiting reply the Management issued an order dated 29.08.2007 terminating his services. The action of the Respondent in terminating the service of the petitioner is illegal and unjustified. The punishment awarded to him is shockingly disproportionate also. The petitioner is entitled to be reinstated in service of the Respondent with backwages, continuity of service and other attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner was on unauthorized absence since 06.03.2007 and until his dismissal from service. The Respondent has communicated to the petitioner that since he had gone abroad without proper approval his resignation is not accepted and that he should report for duty immediately. The petitioner did not attend the domestic enquiry even after several reminders. So the enquiry had to be conducted ex-parte. The petitioner was issued with a letter dated 06.08.2007 seeking his explanation on the report of the Enquiry Officer. Instead of giving explanation he made a plea to accept his resignation. The petitioner had joined in a job abroad without proper relief from the Company. So it is dual employment and therefore his representation to accept his resignation was not considered. The petitioner was dismissed from service following due process of law and in accordance with the principles of natural justice. The petitioner had willfully absented himself unauthorizedly from 06.03.2007 till 29.08.2007, the date of his dismissal and thereby has voluntarily abandoned his employment. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. The petitioner having contended that the domestic enquiry by the Respondent was not conducted in a fair and proper manner the matter was heard as a preliminary point and was found against the petitioner. So there is no necessity to consider the issue regarding fairness of enquiry in the main dispute.

7. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W19.

8. **The points for consideration are:**

- (i) Whether the action of the Respondent in terminating the petitioner from service w.e.f. 29.08.2007 is legal and justified?
- (ii) What, if any is the relief to which the petitioner is entitled?"

The Points

9. The petitioner who had been employed in the Madras Fertilizers Ltd., the Respondent submitted a leave application on 28.02.2007 for leave for 60 days. He left the establishment even before the leave was sanctioned. He had worked in the institution upto 03.03.2007. He availed leave from 06.03.2007 on the basis of his leave application though his leave was not sanctioned or communicated to him. It is the case of the petitioner that he sought leave on the ground that he has been selected for final interview for a job at Saudi Arabia and that is why he had left on 06.03.2007 itself. According to the petitioner, he presumed

that his leave application has been sanctioned. On reaching Saudi Arabia, probably because his job there was confirmed, he sent resignation letter to the Respondent on 30.03.2007. The Respondent had sent a reply to him on 30.04.2007 stating that the leave sought for by him has been refused and his resignation could not be accepted. He was directed to report for duty. However, the petitioner did not report for duty. He sent another letter to the Respondent requesting to accept his resignation and relieve him from service. The Respondent initiated disciplinary proceedings against the petitioner, conducted an enquiry and dismissed him from service. Even though the petitioner received notice of the Enquiry Officer to attend the enquiry proceedings, he was seeking postponement again and again. Ultimately, enquiry was conducted in his absence and a report was given. On the basis of the report the Respondent had again asked the petitioner to submit his explanation regarding the enquiry report. The petitioner sought for time and wanted the matter to be posted within some particular dates. The Respondent obliged and asked him to appear on 21.08.2007. After hearing him the Respondent dismissed the petitioner from service.

10. The petitioner has raised the dispute years after his dismissal from service on 29.08.2007. The dispute is seen raised before the Asstt. Labour Commissioner on 04.01.2012 only. Though all along the petitioner had been asking the Respondent to accept his resignation, in the Claim Statement the petitioner has claimed the relief of reinstatement in service with backwages, continuity of service and other attendant benefits on holding that his termination is not legal and justified.

11. The argument that is advanced on behalf of the counsel for the petitioner is that the petitioner has properly submitted his leave application and the same should have been accepted. He was under the impression that the same was accepted. It is further argued by the counsel that the absence of the petitioner was under compelling circumstances.

12. The counsel for the petitioner has referred to the provisions regarding leave in the Standing Orders of the Respondent. He has referred to Clause-17.6 of the Standing Orders which states that application for leave under Clause-17.5 shall be disposed of within 4 days. According to the counsel the leave application was not disposed within the period or any communication given to the petitioner and he was under the impression that the same was sanctioned. Clause-17.3 of the Standing Orders states that a workman who decides to obtain leave of absence shall apply to the sanctioning authority in advance and shall not avail of the same before it is actually sanctioned except in case of extreme emergencies. Again, as per Clause-17.4 except in an emergency even applications for leave for three days or less should be made at least

24 hours prior to the time from which the leave is required. As per Clause-17.5 applications for leave for more than 3 days should be made at least 7 days before the date from which the leave is required. As per Clause-17.8 before proceeding on leave the workman should inform the Officer-in-Charge of the Section or the department in which he is employed, of his address during the period of leave. On reading Clause-17.4 and Clause-17.5 together it can be seen that the exception in the case of an emergency is available only for leave for three days or less and not for leave for more than 3 days. An application for leave for more than 3 days should necessarily be given at least 7 days before the date from which leave is required. The petitioner had submitted his leave application on 28.02.2007 which is not in compliance with Clause-17.5 of the Standing Orders. As seen from this clause the authority should get at least 7 days before the date from which the workman is to avail leave. In the case of the petitioner having applied for leave on 28.02.2007 he left the office on 03.03.2007 and is said to have left the station itself on 06.03.2007. No doubt as per Clause-17.6 the application for leave should have been disposed of within 4 days. The petitioner did not wait for expiry of even these four days. The petitioner could have left the station only after sanctioning of leave has been communicated to him. As seen from Clause-17.2 leave cannot be sanctioned as of right and can be granted only after considering the exigencies of work. The sanctioning authority has the discretion to revise, curtail or revoke leave at any time according to the requirement of work.

13. The case of the petitioner is that he was under the impression that leave was sanctioned and that is why he has left. Even giving allowance to this assumption on the part of the petitioner it could be seen that he was informed in black and white by the Respondent that his leave has not been sanctioned. This was in response to the letter of resignation sent by the petitioner to the Respondent. In the communication the petitioner was asked to report for duty. But the petitioner has not obliged. He continued abroad at his place of work. It was when he failed to report for duty in spite of direction disciplinary proceedings has been initiated against the petitioner. Even though, the proceedings was postponed to different dates at the request of the petitioner, he failed to participate in the proceedings apparently for the reason that he still remained abroad and was working there. There was no reason for the petitioner not to take note of the communication given by the Respondent that his leave is not sanctioned.

14. The charges against the petitioner in the disciplinary proceedings were that he absented from duty w.e.f. 06.03.2007 without prior sanction of leave, he went abroad and failed to obtain prior permission of the competent authority before leaving headquarters, he engaged himself in employment of others without proper relief in violation of the rules of company and failed to follow the prescribed

rules of the Company and his absence has caused disruption in the work schedule. The charges for misconduct were under Clause-23.1 (15), 23.1 (44), 23.1 (63) and 23.1 (69). As per Clause-23.1(15) absence without permission exceeding 8 consecutive days is a misconduct. Clause-23.1(44) is to the effect that any act subversive of discipline of the Company is a misconduct. Clause 23.1 (63) is engaging in self employment or in employment of others to the detriment of the company. Clause-23.1(69) is leaving the Headquarters without prior permission of the Company. Apparently, the petitioner had committed all these misconducts. Even though an application for leave was submitted he had left without waiting for sanction of the leave. There is nothing to show that he had obtained permission from the authorities to leave the station.

15. There was sufficient opportunity to the petitioner to come back and join duty when he was informed that his leave is not sanctioned. Disregarding this he continued at his place of work abroad. His only demand at the time was that his resignation letter should be accepted. Even though he was informed that it could not be accepted because of his absence from duty without prior permission, he did not try to come back or join duty. So it is to be treated as abandonment of service. The very fact that the petitioner has raised the dispute only after more than 5 years of his dismissal also would show that he had abandoned his service because of his employment abroad. He did not find time to come back and challenge the proceedings.

16. The counsel for the petitioner has referred to the decision in KRUSHANAKANT B. PARMAR Vs. UNION OF INDIA AND ANOTHER reported in AIR 2013 SC (Supp) 42 to support his argument that the absence of the petitioner was under compelling circumstances. In the above case the Apex Court has found that if the absence from duty was the result of compelling circumstances under which it was not possible to report or perform duty such absence cannot be held to be willful. The absence of the petitioner cannot be said to be the result of compelling circumstances. His continuing in his job abroad could never be taken as a compelling circumstances for his absence from duty. On the other hand it would only show that he had abandoned his position in the Respondent establishment. He demand was only acceptance of resignation which would also show that he had abandoned the job and had no intention to rejoin the service of the Respondent. So the present request of the petitioner to be reinstated in service could not be acceded to in any case. The petitioner is not entitled to any relief under the circumstances.

17. In view of my discussion above, the reference is answered against the petitioner. An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/
Petitioner : WW1, Sri K.R. Kumaran

For the 2nd Party/
Management : None

Ext.W13 14.08.2007

Xerox copy of letter from General Manager, P&A of the Respondent to the petitioner

Ext.W14 21.08.2007

Xerox copy of letter from Petitioner to the General Manager P&A of the Respondent

Documents Marked :**On the petitioner's side**

Ex.No. Date Description

Ext.W1 18.02.2007 Xerox copy of letter from Petitioner to the General Manager, P&A of the Respondent

Ext.W2 30.03.2007 Xerox copy of letter from Petitioner to the General Manager, P&A of the Respondent.

Ext.W3 13.04.2007 Xerox copy of letter from Respondent to the Petitioner

Ext.W4 07.05.2007 Xerox copy of letter from Petitioner to the General Manager, P&A of the Respondent

Ext.W5 30.05.2007 Xerox copy of charge memo issued to the petitioner

Ext.W6 02.07.2007 Xerox copy of letter from Petitioner to the General Manager, P&A of the Respondent appointing enquiry officer and presenting officer

Ext.W7 09.07.2007 Xerox copy of letter from enquiry officer to the petitioner

Ext.W8 16.07.2007 Xerox copy of letter from petitioner to the enquiry Officer

Ext.W9 16.07.2007 Xerox copy of letter from enquiry officer to the petitioner.

Ext.W10 02.08.2007 Xerox copy of the enquiry report

Ext.W11 06.08.2007 Xerox copy of letter from General Manager, (P&A) of the Respondent enclosing enquiry report

Ext.W12 11.08.2007 Xerox copy of letter from Petitioner to the General Manager P&A of the Respondent

Ext.W15 29.08.2007

Xerox copy of the order issued by the General Manager (P&A) of the Respondent imposing the punishment of dismissal from service against the petitioner

Ext.W16 13.09.2007

Xerox copy of letter from Petitioner to the Respondent

Ext.W17 28.11.2011

Xerox copy of letter from Deputy General Manager (P&A) of the Respondent to Under Secretary to Government, Department of Chemicals and Fertilizers, New Delhi

Ext.W18 04.01.2012

Xerox copy of the petition filed by the Petitioner before the Asstt. Labour Commissioner (Central), Chennai-9

Ext.W19 18.01.2012

Xerox copy of the remarks filed by the Respondent before the Asstt. Labour Commissioner (Central), Chennai

On the Management's side

Ex.No. Date Description

Nil

नई दिल्ली, 2 नवम्बर, 2015

का.आ. 2126.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स प्रकाश कंसट्रक्शन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 19/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.10.2015 को प्राप्त हुआ था।

[सं. एल-30012/10/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 2nd November, 2015

S.O. 2126.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2015)

of the Central Government Industrial Tribunal/Labour Court-2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Prakash Construction and their workman, which was received by the Central Government on 30-10-2015.

[No. L-30012/10/2015-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present :

Sri Kewal Krishan, Presiding Officer

Case No. I.D. No.19/2015

Registered on 18.5.2015

Sh. Raj Kumar, S/o Sh. Mahender Ram,
Village-Munak Dera, 6 Hazara Pul,
Post-Munak, Distt. Karnal ...Petitioner

Versus

M/s Prakash Construction,
House No.1069-P, Sector-13-17,
HUDA, Panipat, Haryana ...Respondent

APPEARANCES :

For the Workman : Workman ex parte
Management : Sh. Vikram Kumar

AWARD

Passed on:-28.9.2015

Vide Order No. L-30012/10/2015-IR(M), dated 27.4.2015 the Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of M/s Prakash Construction in terminating the services of Sh. Raj Kumar S/o Sh. Mahender Ram w.e.f. 25.7.2014 is justified? If not, what relief the workman is entitled to and from which date?”

A notice was sent to the workman who appeared in person, but did not come present on 3.9.2015. A letter was received in this office on 1.9.2015 on behalf of the workman in which he stated to withdraw the case as he affected compromise. In view of his letter, the matter stand compromised.

Since the matter has been compromised between the parties, the reference is answered against the workman and he is not entitled to any relief in this reference. A copy

of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 2 नवम्बर, 2015

का.आ. 2127.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स लाईफ इंश्योरेंस कॉर्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, गोदावरीखानी के पंचाट (संदर्भ संख्या 46/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.10.2015 को प्राप्त हुआ था।

[सं. एल-17025/5/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 2nd November, 2015

S.O. 2127.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2015) of the Industrial Tribunal/Labour Court, Godavarikhani now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 30-10-2015.

[No. L-17025/5/2015-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-CUM-VI ADDL. DIST. & SESSIONS COURT, GODAVARIKHANI

Present :

SRI G. V. KRISHNAIAH, Chairman-cum-
Presiding Officer

Thursday, on this the 1st day of October, 2015

INDUSTRIAL DISPUTE No. 46 OF 2015

Between:

Smt. Mary Grace, W/o. Jagadishwar,
Aged 45 years, R/o.H.No.25-6-341,
Vishnupuri, Kazipet, Warangal District,
Temporarily came down to Peddapalli
V/o. Peddapalli Mandal,
Karimnagar District ...Petitioner.

-And-

1. The Branch Manager,
Life Insurance Corporation of India,
Peddapalli.

2. The Divisional Manager,
Life Insurance Corporation of India,
near Tower Circle, Karimnagar.
3. The Zonal Manager,
Life Insurance Corporation of India,
South Central Zone, Zonal Office,
Secretariat Road, Saifabad,
Hyderabad.
4. The Chairman, Central Office,
Life Insurance Corporation of India,
Yogaskhema Jeevan Bharathi,
Post Box No.19953, Bombay ... Respondents

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri S. Bhagavantha Rao & Smt. S.V. Ramadevi, Advocates, for the petitioner and no representation for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:-

AWARD

1. The averments of the petition in brief are that the petitioner was appointed as an Assistant in Mancherial Branch by the Divisional Manager, LIC Karimnagar on 19-1-1996. The petitioner was paid salary of Rs.3,000/- per month. Petitioner worked 2 years in Mancherial Branch, 7 years in Huzurabad Branch and 4 years in Narsampet Branch. In the year 2009, the petitioner was transferred to Peddapalli Branch at her request. Unfortunately the petitioner used to absent due to her personal problems at her house and also due to the health problems of her son and her ill health. The husband of the petitioner used to beat the petitioner and her children in a drunken condition.
2. The petitioner was foisted a false charge of absenteeism in the year 2009 duly issuing a charge sheet dt. 8-12-2009 and also issued show cause notice dt. 23-2-2010 and she was terminated from service on 22-3-2010. The charges levelled against the petitioner are as follows:-

CHARGES:-

- (i) That you have absented yourself from your office duties in an un-authorized manner on 30-4-2009, 27-5-2009 to 29-5-2009 and 18-9-2009 to 19-9-2009, 24-9-2009 without any leave and information to the officer.
- (ii) That you have been again continuously absenting yourself from your office duties in an unauthorized manner since 30-9-2009 without any leave and intimation to the office in writing.
- (iii) That you have been sent a letter dt. Nil seeking sick leave without enclosing the necessary Medical certificate and without mentioning the period of leave required, which is not valid.
- (iv) That for the letters dt. 8-10-2009, 21-10-2009, 29-10-2009 addressed to you by the Branch that

was sent to you by Regd. Post Ack., due, you have neither replied nor resumed to duties.

- (v) That a letter dt.21-10-2009 addressed to you was sent by Regd.Post informing your unauthorized absence on 30-4-2009, 27-5-2009 to 29-5-2009, 18-9-2009 to 19-9-2009, 24-9-2009, 30-9-2009 onwards and directing you to appear before Dr. D.C.Thirupathi Rao, Divisional Medical Referee for medical examination was not responded by you.
 - (vi) That one more letter dt. 3-11-2009 addressed to you to appear before Medical examiner and instructions thereof which was sent by Regd. Post. Ack., due, to your two addresses available with us was not complied with. One letter sent to Peddapalli address was returned undelivered by postal authorities mentioning that you are not staying in the address and another letter sent to Kazipet was delivered. However you have neither replied nor resumed to duties as directed.
 - (vii) That you thus, continued to remain unauthorisedly absent from office duties from 30-9-2009 onwards in breach of Regulations 21, 24, 30(1) & (2) of the LIC of India (Staff) Regulations, 1960 for which act of misconduct any one or more of the penalties specified under Regulation 39(1)(a) to (g) of the aforesaid (staff) Regulations can be imposed on you.
3. The petitioner did not receive charge memo, charge sheet, enquiry reports and removal order. The respondents conducted exparte enquiry into the charges behind back of the petitioner without supplying any documents and also without paying any subsistence allowance. The petitioner is suffering a lot of economical difficulties ever since the date of her termination. Therefore, the petitioner prays to direct the respondents to reinstate her into service with continuity of service, attendant benefits and with full back wages.
 4. The respondents have not filed counter and there is no representation on their behalf on 28-9-2015.
 5. Heard the learned counsel for the petitioner.
 6. On behalf of the petitioner, Ex.W-1 to Ex.W-9 are marked. No documents are marked on behalf of the respondents.
 7. Counsel for the petitioner filed Memo U/sec.11-A of ID Act stating that the petitioner is not disputing the validity of domestic enquiry and to decide the matter on the gravity of charges.
 8. Now the point for consideration is:-
“Whether the punishment of removal from service is justified?”

9. Point :

Letter dt.11-1-1996 under Ex.W-1 shows the petitioner was selected as “Assistant” and allotted to Karimnagar Division by the respondents’ LIC. Order dt. 9-9-1996 under Ex.W-2 shows that the petitioner was confirmed as Assistant. Charge sheet is marked as Ex.W-3 and it is seen that the petitioner did not give any explanation thereto. It shows the petitioner absented to duties unauthorisedly without any leave or intimation on 30-4-2009, 27-5-2009 to 29-5-2009, 18-9-2009, 19-9-2009, 24-9-2009 and from 30-9-2009 onwards; and she did not appear before the doctor for medical examination as per the letters dt.21-10-2009 and 3-11-2009; and that she continued to remain unauthorisedly absented to her duties, Show cause notice dt.23-2-2010 under Ex.W-4 shows that there is no response from the petitioner and that enquiry was conducted exparte on 28-1-2010 and that the charges were proved against the petitioner. There is also no response from the petitioner and she did not reply to any letters of the corporation since 8-10-2009. Petitioner was required to show cause within 15 days as to why penalty of removal from service may not be imposed on her. Finally petitioner was removed from service by order dt.22-3-2010 marked as Ex.W-9. Appeals dt.3-10-2012 and 1-2-2015 are marked as Ex.W-6 & W-7.

10. Admittedly the petitioner having been selected and appointed as “Assistant” in January 1996, worked for more than 12 years. Petitioner did not submit any explanation to the charge sheet and she did not participate in the enquiry. Hence it cannot be said that initiation of the disciplinary proceedings by the respondents was uncalled for. However, taking into consideration the service of the petitioner for 12 years, proportionality of punishment has to be considered, particularly when the Industrial Disputes Act is a social welfare legislation.

11. Further it is seen that the petitioner was imposed with the penalty of reduction of basic pay by one stage by order dt.28-9-2006 and reduction in basic pay by two stages by order dt.17-2-2009, as per Ex.W-4 show cause notice. Therefore, I am of the considered opinion that imposing stern punishment on the petitioner is required, other than capital punishment of removal from service. In a decision reported in 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARATH ELECTRICITY BOARD, it was held that the length of service based on good record and the socio economic condition of the delinquent workman are considerations which should weigh with the Tribunal while exercising discretion.

12. It is true that there is delay on the point of petitioner in approaching this court. As the petitioner put up service of more than 12 years, this Tribunal is constrained to set aside the removal order, by imposing stern punishment so that she may not repeat the lapse in future and mend

herself. Therefore, I hold that reinstatement of the petitioner into service as “afresh Assistant” would meet the ends of justice. Accordingly, the removal order dt. 22-3-2010 under Ex.W-9 is set aside. The petitioner is not entitled to any continuity of service, attendant benefits and back wages.

13. In the result, the order of removal dt.22-03-2010 marked as Ex.W-9 is set aside. The respondents are hereby directed to reinstate the petitioner into services as “afresh Assistant” within (30) days from the date of publication of this Award. The petitioner is not entitled to any continuity of service, attendant benefits and back wages.

SRI G. V. KRISHNAIAH, Chairman-cum-
Presiding Officer

Appendix of Evidence**Witnesses Examined**

For Workman :	For Management :
-Nil-	-Nil-

EXHIBITS**For workman :**

Ex.W-1	Dt. 11-01-1996	Appointment order issued to the petitioner as Assistant by the General Secretary
Ex.W-2	Dt. 09-09-1996	Confirmation letter issued to the petitioner by Sr.Divisional Manager
Ex.W-3	Dt. 08-12-2009	Charge sheet
Ex.W-4	Dt. 23-02-2010	Show cause notice
Ex.W-5	Dt. 03-10-2012	Appeal submitted to the Divisional Manager, LIC of India, Karimnagar Division.
Ex.W-6	Dt. 01-02-2015	Demand letter submitted to respondent
Ex.W-7	Dt. 04-02-2015	Postal receipts 2 Nos.
Ex.W-8	Dt. 09-10-2012/ 09-02-2015	Postal Acks., 2 Nos.
Ex.W-9	Dt. 22-03-2010	Removal order

For Management :

-Nil-

शुद्धिपत्र

नई दिल्ली, 2 नवम्बर, 2015

का.आ. 2128.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पटना के पंचाट (संदर्भ संख्या आई डी नं. 03 (सी)/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/07/2015 को प्राप्त हुआ था।

[सं. एल-12025/01/2015-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

CORRIGENDUM

New Delhi, the 2nd November, 2015

S.O. 2128.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 03(C) of 2011) of the Industrial Tribunal-cum-Labour Court, Patna as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 06/07/2015.

[No. L-12025/01/2015-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Industrial Dispute Case No.: 03 (C) of 2011

Between

The management of Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna-800001/The Asst. General Manager, State Bank of India, Zonal Office, Khanjarpur, At & P.O.- Bhagalpur, Dist-Bhagalpur

and

Their workman Sri Shashi Bhushan Prasad, S/o- Late Bhola Mandal, Vill- Durgasthan Tilakpur, P.O.- Tilakpur, P.S-Sultanganj, Dist.- Bhagalpur, Bihar.

For the workman : Shri B. Prasad, General Secretary, Bank Employees Federation, Bihar.

For the management : Sri Ashok Kumar Sinha, Branch Manager, ADB, Ghogha, Bhagalpur.

Present :

Bipin Dutta Pathak, Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated 22nd June, 2015

This case has been filed u/s- 2A (1) & (2) of the Industrial Disputes (Amendment) Act, 2010. Over denial of regularization of the services as a messenger/peon and wrongful termination from services of a temporary Messenger / Peon w.e.f. 06.03.2009 while working at State

Bank of India, Agriculture Development Branch, Ghogha, Dist.- Bhagalpur.

2. The statement of claim of workman Sri Shashi Bhushan Prasad is that he has raised an Industrial Dispute before Assistant Labour Commissioner (C), Patna against his termination from services of the bank w.e.f. 06.03.2009.

Dispute has been raised on 19.06.2009. Conciliation proceedings ended in failure on 27.08.2010. Dispute has been raised within stipulated period and that remained pending over an year with no solution. Workman preferred an application under the following terms:-

“Whether the action of the management of State Bank of India, Ghogha Branch in denying regularization of services of sri Shashi Bhushan Prasad as a Messenger/ Peon and terminating his services in violation of section-25F of the I.D. Act, is legal and justified? If not, what relief (S) the workman is entitled to?”

The facts of the case is that workman was appointed by the management of State Bank of India to discharge the duties of a messenger/peon w.e.f. 30.04.2000. He discharged his duties:-

- (i) Taking out Register from Almirah and placing the same on table /counters;
- (ii) Preparation and posting of mails to post office,
- (iii) Distribution of notices relating to loans/ recovery etc. to parties through peon's book.
- (iv) To accompany the Recovery Team during the course of recovery of loans;
- (v) To accompany the bank officers to Lok Adalat camps;
- (vi) Filing of letters/ circular and arrangement of stationary;
- (vii) Brining stationary article from the Branches/ officers;
- (viii) Serving water, tea to the members of staff and customers;
- (ix) Other sundry jobs of a Messenger/ Peons;

He used to work on 10 A.M to 6 P.M regularly and same times even beyond that as per requirement of the Bank. He was initially paid wages @ Rs. 15/- per day which was raised to @ Rs. 25/- , Rs. 40/- and lastly Rs. 50/- per day. Payment was made through vouchers. He used to discharge all the duties as per the instruction of the Branch manager and other superior officials of the Bank. He worked from 30.04.2000 to 06.03.2009. His services stand terminated. As usual he went to discharge of duties on the following day, he was stopped from working and was again informed of termination of his services from evening of 06.03.2009. He was neither given any notice pay nor

retrenchment compensation preceeding his termination. He was paid his wages regularly from 30.04.2000 to 31.08.2008 and on 01.09.2008, he was instructed by the authority to take payment in different names to which he did not agree. He was not made payment of his wages from 01.09.2008 to 06.03.2009. His duties were perennial in nature. He used to perform some clerical duties as per instruction of the management from time to time. His duties were identical with other permanent staff of the Bank. The termination of the workman is covered u/s-2(oo) of the I.D.Act, 1947. After termination he is facing starvation as he has no any alternative means of livelihood. Action of the management is not considering regularization but terminating the services of the workman is neither legal nor justified.

- (i) The management violated the mandatory provisions as contained in section-25F of the I.D. Act.
- (ii) Management being a public sector Bank and a 'State' within the meaning of Article 12 of the India Constitution resorted to unfair Labour Practice as per Schedule V of the I.D.Act.
- (iii) Management failed to follow the principle of 'Equal pay for Equal work' as per Article 39 (d) of the Indian Constitution.
- (iv) Management has violated section 25(H) of the I.D.Act.

Letter dt-25.11.2010 sent by Assistant Labour Commissioner (C), Patna to the Secretary, Govt. of India, Ministry of Labour, New Delhi indicates that conciliation proceeding ended in failure on 27.08.2010.

3. Written statement has been filed on behalf of the Bank (Management) stating therein application filed by the claimant u/s-2A (1) & (2) of the amended I.D.Act, 2010 is neither maintainable in law nor on fact. It is not a case where an Industrial Dispute has been referred under section 10(1) (d) of the I.D.Act, 1947 mentioning therein any term of reference. It has been stated that Shri Shashi Bhushan Prasad has filed the application under reply under section- 2A (1) & (2) of the I.D.Act as amended by Act No.24 of 2010. Bank in this regards raised certain preliminary question relating to the maintainability of the reference in the present form, but as it appears that no order rejecting the contentions rose by the Bank therein has been passed. The term of reference has been framed by the workman himself. Under the Industrial Disputes Act, it is only the appropriate government which is competent to frame the term of reference. The amendment does not seize or supersede the powers of the appropriate government conferred under section 10 of the Act. The term of reference as framed by the workman is not only illegal but also contradictory. Section 2A (1) & (2) of the Industrial Dispute act is confined to termination of service

and not regularization in service. These two issue are quite different. If the complete term of reference is read as it cannot be an Industrial Dispute under section 2(k) of the I.D.Act. Dispute raised by an individual for regularization is not an Industrial Dispute. Selection tests required for regularization in service are quite different and various factors are required to be considered which has no bearing with the termination of service. It is submitted both the issues cannot be decided in the same proceeding. The conciliation officer is a necessary party and the learned Tribunal should hear his views also as he has dealt with the dispute. The person has been filed a writ application before the Patna High Court bearing C.W.J.C No.:- 5287 of 2009 which was dismissed by order dated 27.04.2009 in which the Hon'ble High Court held the person concerned is a daily wagger who holds no regular/permanent post.

It has been further submitted that the concerned person was engaged as and when exigencies of work arose on daily basis and whenever work was taken from him, he was paid his wages as agreed between the parties. He has performed works in the SBI, ADB Ghogha, Bhagalpur as and when instruction was given by the Branch Manager. It is submitted that his claim that he had worked since 30.04.2000 till August,2008 continuously, is totally baseless and denied. His claim that he had also worked 240 days in every calendar year in also incorrect.

The Bank has its own rules of recruitment for appointment of subordinate cadre staff satisfying the requirement of Articles 14 and 16 of the Constitution of India. He was not issued any appointment letter even to work as temporary staff. His engagement was purely as a casual worker on daily wages engaged as and when required. Payment were made to him through petty cash which means payment against some expenses which are in petty nature and that cannot be termed as regular payment of wage or other benefit. He used to discharge his duties on the days he was engaged on the instruction of the Branch Manager. Such discharge of duties were of casual nature and it cannot be said to be permanent and / or perennial in nature to discharge regular duties. Regular appointments are made who work as regular staff of the Bank. Shri Shashi Bhushan Prasad was fully aware of the fact that the Bank has its own rules of recruitment and his casual engagement as daily wagger as and when required, was not in compliance of the rules of recruitment of the Bank. During the whole period of his work as claimed by him, never demanded for his regularization in service. It is only when he could not get any engagement from the Bank even as casual daily wagger, he started demanding regularization. Neither any vacancy was advertised nor any requisition to the Employment Exchange was sent nor the Branch Manager had any power to appoint subordinate staff. His engagement was totally non-est. The Bank is legally bound to follow of the equality in compliance of Articles 14 and 16 of the Constitution of

India in the matter of appointment. Merely because a daily wager as such a temporary employee is continued for a long time he would not be entitled to absorbed in service or made permanent. His claim that he had worked from 2000 to 2008 and that too continuously is wholly baseless. In this contest reference has been made about the decision of State of Karnataka Vs. Uma Devi [2004(4) SCCI] has been mentioned. Other decision and also been mentioned and it has been hold that “the appointment made in total disregard to the constitutional scheme as also the recruitment rules framed by the employer, which is state within the meaning of Article 12 of the Constitution of India, the recruitment would be illegal one.” An illegal appointment cannot be legalized by taking recourse to regularization. *Vide* order dated- 27.04.2009 in case of C.W.J.C No.- 5287 of 2009 filed by the petitioner, the Hon’ble High Court has held that person concerned is a daily wager. As there is no provision in the Bank of regularization of a daily wager, the person concern cannot be regularized. Engagement of Shri Shashi Bhushan Prasad as daily wager is illegal. He submitted that a school transfer certificate dated-26.07.2006 from Government High School. In that certificate his date of birth has been shown to be 31.03.1988. He has claimed that he has started working in the Bank from April, 2000. Therefore, in April 2000 he was merely a child of about 12 years. Engagement of a 12 years child in the Bank, even as casual daily wager, was nothing but an impossibility and illegal. Comment has been made about the statement made by the Shri Shashi Bhushan Prasad.

4. Rejoinder to the written statement of the Bank has been filed mainly stating that workman on worked for morethan 240 days in 12 calendar months as per section-25B of the I.D.Act. The retrenchment has been covered u/s – 2 (oo) of the I.D.Act. Management violated the provision of section-25F of the I.D.Act. It is also been stated that the services of workman were utilised as a radice workman for over 8 years. He discharged the duties of a messenger from 30.04.2000 to 06.09.2000 uninterruptly.

5. Management of SBI has also filed a petition dated- 03.05.2011 raising question of maintainability and further steps in the aforesaid case.

Mentioned objection has been raised that application was filed u/s 2A (1) and (2) of the I.D.Act which has been added vide Industrial dispute (Amendment) Act, 2010. A Gazette notification which brought amendment in to force, has not been annexed with the application. In this contest when the amendment has been made then there is no need to file Gazette notification became amendment has already got statutory force. Other objection has been made that amendment act is not enforceable unless Industrial Dispute (C) rules are accordingly amended or separate rules are framed. This petition has got no force itself and is accordingly rejected.

6. A petition dated- 04.08.2014 was filed on behalf of the workman, Shashi Bhushan Prasad stating therein that dispute has been referred for adjudication by Ministry of Labour, Govt. of India, New Delhi *vide* order No.- L-12012/ 102 / 2010 – IR (B-1) dated- 26.05.2011 before the Hon’ble CGIT No – 1 Dhanbad. Workman was not in a position to bear the travelling expenses for attending the proceedings at Dhanbad, an I.D.Case was filed before the Hon’ble Industrial Tribunal, Patna as per the provisions of Section 2A (1) & (2) of the Industrial Dispute (Amendment) Act, 2010.

7. It is also appears that the dispute was referred for adjudication “Whether the action of the management of State Bank of India, Patna in terminating Shri Shashi Bhushan Prasad, S/O Shri Bhola Mandal from service with effect from 06.03.2009, is legal and justified? To what relief the workman is entitled?”

It appears that award was passed stating therein that on 30th Novemebr, 2011. Registered letter duly signed by Shashi Bhushan Prasad was received that the same case has been already filed before the Industrial Tribunal, Patna under the provision of 2A (1) & (2) of Industrial Dispute (Amendment) Act, 2010. In the same has been registered as I.D.Case No.- 3(C) of 2011 and the same is pending for the adjudication. In such circumstances he has prayed that he may be allowed to withdraw case before this tribunal. In view of such prayer Tribunal passed no dispute award which was already notified on 08.12.2011. From this it appears that matter has not been adjudicated earlier.

8. Workman has examined only one witness W.W-1 Shri Shashi Bhushan Prasad who has stated in his evidence that he worked in SBI Branch Ghogha, Bhaglpur on the post of messenger / peon from 30.04.2000 to 06.03.2009 on daily wages. He worked like taking out of ledger, cash box, peon register and going to post office, bringing stationary etc. He used to serve notice in villages. He used to served water to the staffs. He worked from 10 A.M to 5.30 P.M. In the begining he got Rs 15/- per day. Which was inhanced to Rs. 50/- per day.

Payment was made to him from petty cash, he worked like permanent messenger. He worked for 240 days regularly in one calendar year. He has filed details of his working. Duly signed by him which has been marked as Ext.-W/4.

He has also proved Ext.-W/5 which is in respect of the payment of Rs. 890/- paid to him by Vishwajeet Kumar the then Branch Manager. He has also proved Ext.-W/6 online statement print of Rs. 890/- in his name. He has also proved Ext.-W/7 letter dated- 04.10.2005 signed by Chief Officer of SBI, ADB, Ghogha Branch Bhagalpur by Janardhan Prasad Pandey, addres to Branch Manager State Bank of India, ADB, Ghogha Branch.

He has also been proved Ext.-W/8 letter dt- 04.08.2005 signed by Janardhan Prasad Pandey and addressed to Branch Manager stated Bank of India, ADB, Ghogha.

He has also proved Ext.-W/9 the letter dt- 02.12.2008 given to Shashi Bhushan Prasad for bringing K.V.P. payment. Similarly Ext.-W/10 is letter dt-08.11.2008 to bring payment of N.S.C signed by Ajit Vishal incharge Branch Manager. Ext.-W/11 is the letter dated-03.10.2002 signed by Rabindra Kumar Pandey Branch Manager and Ext.-W/12 is letter dt- 15.12.2006 signed by Branch Manager to the Secretary Special Lok Adalat, Bhagalpur. Ext.-W/13 series is description of payment of wages for working of records.

He further stated that voucher was prepared for payment of his work and he has proved photo stat of 64 pages for the period 31.12.2006 to 31.12.2007. Further payment was made through register it has been marked as Ext.-W/14 with objection. There is sign on payment voucher and also sign of the then Branch Manager Sri Anil Kumar Ambastha, Anil Kumar Singh marked as Ext.- W/15. He has also proved Bank circular dated- 02.01.2003 and 23.12.2002 marked as Ext.- W/16 and Ext.-W/16-A with objection and Ext.-W/17 with objection and stated that according to circular the Branch Manager has sent letter to the Zonal Office, letter no.- 21/178 dated- 21.03.2003 marked as Ext.-W/18. He has also stated that his date of birth is 05.09.1981 but by mistake he submitted in the bank his date of birth is 31.03.1988. Prior retrenchment no notice or compensation was made to him.

In cross-examination he stated that he filed Ext.- W/14. Payment was made to him for serving water. Ext.- W/14 at page 11 is letter to cheque collection which was given to him for depositing in another branch. He also identified Ext.-W/14 page 12 which was of 31st March, in respect of closing report. There is initial at page 12 of Ext.- W/14 of Manoj Kumar Singh. There is not his signature on Ext.W/14 at page 12 but one of its copy is Bank office which bear his signature. Payment was made to him on the same date when he served water. He used to daily for serving water. Bank has never told him not to serve the water. He further stated that Ext.- W/16, A page 66 is the circular for temporary appointment. Ext.- W/17 page 68 is the circular in respect of appointment of temporary employee who completed 240 days. Ext.-W/6 relates to crediting of Rs. 890/- for distributing letter in villages. Ext.-W/9 is the letter of the bank for K.V.P. which was extra work done by him and no separate payment was made to him. A single payment he used to do all the workers.

He denied that he never worked for 240 days. He did all the worker as done by permanent messenger. He does not remember the name of messenger of that time.

On recall in further examination-in-chief he stated that Ghogha Branch, of the Bank Janardhan Prasad Pandey

was cash officer. In certificate of date of birth was year- 1981 and in another certificate of School Living Certificate by mistake year 1988 has been mentioned which was later on corrected. He regularly worked for 240 days.

In cross-examination he stated that it is wrong to say that he himself left to going in the bank. He also denied that he was called in Bank on the day but work in bank and he called for that he daily used to go to bank.

9. 18 documents has been exhibited on behalf of the workman. One document marked X-for identification which is School Transfer Certificate of Shashi Bhushan Prasad dt- 26.07.2006 and date of birth is 05.09.1981 which is also written in the word.

Ext.-W/1 is the letter sent by Branch Manager which is reminder letter for advising facts of instrument (s) forwarded to Munger Branch for collection. In which signature of Sri Shashi Bhushan Prasad has been attested by Branch Manager. This is dated 23.02.2007.

Ext.- W/2 is the letter dated 10.03.2006 for supply of stationary. Letter was sent to Branch SBI Zonal stationary department Bhagalpur. This letter bears attention of signature of Sri Shashi Bhushan Prasad.

Ext.-W/3 is also for delivery for some items. This letter was sent by Branch Manager to Manager Regional and stationary department Bhagalpur. In this letter signature of Shashi Bhushan Prasad been also attested.

Ext.-W/4 is chart signed by Shashi Bhushan Prasad stating his working days from the year 2002 to year 2009, in year 2000 he worked for 196 days and from the year 2001 to the year 2008 he worked for more than 240 days in each year and till March, 2009 he worked for 57 days.

Ext.-W/5 is the receipt signed by Shashi Bhushan Prasad in regard to payment of bill of Rs. 890/- on 01.10.2005.

Ext.-W/6 is the computer print in respect of above payment.

Ext.-W/7 is the letter sent to Branch Manager, SBI, ADB, Ghogha Branch by Janardhan Prasad Pandey cash officer in which it has been stated that Sri Shashai Bhushan Prasad has been working at this branch from 30.04.2000 as daily wages worker. Payment in petty cash book has always been segregated in labour charges column.

Ext.-W/8 is also letter sent by Janardhan Prasad Pandey cash officer SBI, Bhagalpur to the Branch Manager SBI, ADB, Ghogha stating therein that Shashi Bhushan Prasad has been working at this Branch from 30.04.2000 as daily wages.

Ext.-W/9 is the letter sent for payment of K.V.P. infavour of Branch Manager, SBI Ghogha and signature of Shashi Bhushan Prasad has been attested.

Ext.-W/10 is the letter sent to SBI, ADB, Ghogha by Branch Manager in respect of submits the mentioned N.S.C.

for payment in favour of Branch Manager. Signature of Shashi Bhushan Prasad has been attested.

Ext.-W/11 is the also letter sent to SBI ADB Ghogha for personal attention in the subject mentioned, in this signature of Shashi Bhushan Prasad is also attested.

Ext.-W/12 is the letter sent to the Secretary Special Lok Adalat by ADB Ghogha in which in respect of details of certificate cases Borrowers.

Ext.-W/13, W/13-1 to W/13-20 series is the receipt of payment to Shashi Bhushan Prasad for working of in respect of working in record room etc.

Ext. W/14 & W/15 series is the same 64 pages are in receipt of payment of serving water from November, 2006 to 31.12.2007.

Ext.- W/16 is the photo stat copy of Local Head Office of letter in respect of letter dated- 2nd January, 2003 in respect of sub-ordinate temporary employee.

Ext.- W/16-A is letter dated- 23.12.2002 in this letter it has been stated that in terms of extant instructions, temporary employment in the sub-ordinate cadre is strictly prohibited and it has been observed that in spite of our unequivocal instruction many branches / office have engaged workmen or continued to engage the temporary employees who worked prior to 1997 in the subordinate cadre on temporary basis. It has also been observed that, in many branches / offices, whenever a need arises for the services for watch and ward staff to fill temporary vacancies, instead of seeking fresh names of candidates from Zila Sainik Board, services of ex-temporary watchman are utilised and these workmen are allowed to exceed the minimum number of day. Required for becoming protected employees under the I.D.Act, 1947 resulting in legal complications for the Bank. Such action is highly irregular and should be avoided at all costs. Similar situation may be obtaining in the category of messengers / sweeper also.

Para-3 in order to enable us to assess the gravity of the situation, please furnish the following information/particulars:-

- (i) How many temporary daily wage employees have completed 240 days service in a calendar year or any continuous period of 12 calendar months at branches and offices under your control as on 30.09.2002.
- (ii) Details of month-wise and year wise temporary/daily wage service in each case.
- (iii) A statement indicating their names as well as rank in terms of the qualifying temporary service (aggregate) daily wage service put in as on 30.09.2002.

Ext.- W/17 is dated- 22.05.2002 in respect of absorption of temporary employee in bank permanent

service of all such employees who have put in more than 240 days continuous service in terms of section 25(B) of the I.D.Act.

Ext.- W/18 is details of temporary employees sent by Branch Manager to Asst. General Manager, reason Bhagalpur. It appears that name of Shashi Bhushan Prasad has been mentioned in the above mentioned report and it has been stated that he is working since 30.04.2000 as water boy.

10. Three witnesses have been examined on behalf of the management. M.W-1 Sri Anil Kumar Singh, M.W-2 Sri Shambhu Prasad Srivastava, and M.W-3 Sri Ajay Kumar.

M.W-1 Anil Kumar Singh in his examination-in-chief on affidavit as stated that he was posted at State Bank of India, ADB, Ghogha branch from August-2007 to September, 2008 as branch manager. He is acquainted with Sri Shashai Bhushan Prasad. He worked on totally temporary basis at daily wage when required. He has not worked regularly. Further he has stated that case has filed is not maintainable. Order has been not been passed in this case the objection made in written statement. The case has not been referred to this tribunal by the Govt. of India. Claim for regularisation for service is wrong. Shashai Bhushan Prasad has filed C.W.J.C No.:- 2587 of 2009 which was dismissed vide order dated- 27.04.2009 clearly stating that workman is daily wage worker and he has no right for regularisation. When there was need Shashi Bhushan Prasad worked as daily wage worker and the wages was fixed and was paid to him at the time of receiving payment but never raised dispute for being regular or permanent. It is wrong to say that he worked each year from 30.04.2000 to 06.03.2009 for more than 240 days in each year. He was terminated on 06.03.2009. He has not filed any authenticated documents that he worked more than 240 days. He has filed photo stat petty cash book which is maintained for payment of wages of daily wage worker. There is rules for employment in of subordinate cadre in Bank. Bank has not issued any appointment letter to him. He worked as and when required and payment was made to petty cash book. He worked as per order of branch manager as casual nature. No work was taken from him as regular nature. Mainly he worked as water boys. Seldom other work was taken from him and payment was made at fixed rate. He seldom distributed letter of bank. In case of vacancies, it is informed to the employment exchange after arrival of candidates regular appointment is made. Certificate of bank officer is not recognized according to the rules of bank. Any officer or branch manager of office has no power to give such certificate. There is no provision to regularise daily wage worker, who worked for long period. Appointment of subordinate staff was used to be done according to the seniority from panel. Now any appointment has not been done since several years. Shashi Bhushan Prasad has filed transfer certificate of Govt. High

School in which date of birth has been mentioned on 31.03.1988 and he claimed that he is working since April-2000, it means that at the time he was aged of 12 years. Taking working from such boy is not possible and is illegal. It is wrong to say that his service has been terminated and no compensation has been made to him u/s- 25(F) of the I.D. Act, 1947. He was not entitled to any compensation or notice. Management has not terminated his service and the when required work was taken from him and now there is no need to his work. Chart of working filed by the workman is totally wrong and baseless and the documents does not indicates that preceeding 12 month's from termination he worked for 240 days. It is his responsibility to prove that in preceeding 12 months he worked for morethan 240 days. Other statement of the workman has been denied. It is wrong to say that he worked from 30.04.2000 to 06.03.2009 regularly. Management has never terminated him and he is not entitled for equal pay for equal work, which is given to regular employee. Bank never did unfair labour practice. This witness as exhibited photo stat of petty cash book. He further stated that claim of workman is baseless.

In cross-examination he has stated that he was posted at ADB, Ghogha from August-2007 to September, 2008. He does not know first working day and last working day of Shashi Bhushan Prasad. He was not paid regularly on daily, weekly or monthly basis. Rather he used to submit bill after two month and two and half month and then payment was made. During the working day of this witness payment was made @ 50% per day for work he did on the respective day. He does not know he Shasshi Bhushan Prasad had not worked 240 days in preceeding one year. He has worked less than 240 days. He could not say that how many days he worked preceeding one year from 06.03.2009 and that working day is how much less than 240 days. In calculation of 240 day's he has not included sunday, leave days and 11 days of casual leave. In bank record will be available of the payment made to him. He does not know that branch manager has asked for school leaving certificate which was submitted by the workman. After seeing the school transfer certificate which has been marked as X- for identification. This witness submitted that this certificate was not produced in the bank rather another certificate was produced which was defective and photo stat of that certificate has been filed by the bank. Certificate was filed by preceeding branch manager which was defective. When Shashi Bhushan Prasad was sent outside for distributing letter then travelling expences was paid to him. Witness further stated that one Janardhan Prasad Pandey was working at ADB Ghogha who has retired and died. This witness does not identify his writing. He (workman) was authorised to receive on maturity cheque of K.V.P. from Bhagalpur post office. He further proved the authority letter which bears signature of Shashi Bhushan Prasad but this witness did not identify the

signature of concerned officer. He (workman) was sent for advice of cheque collection from Munger. This witness further stated that authority letter was signed by Anil Kumar Ambastha, Branch Manager. Which also bears signature of Shssshi Bhushan marked as Ext.- W/1. Further he stated that he sent once to bring stationary from Bhagalpur Zonal Stationary Department. This witness identified authority letter signed by Shashi Bhushan Prasad and then branch manager Sri Shambhu Prasad Srivastava which was marked as Ext.- W/2.

It is the duty of messenger to bring advice of cheque collection and stationary. The duty of messenger is to take out and keep register, voucher and to help in another work. It further duty to messenger to distributes local letter and to post letters. His duty is not to serve water. He denied that he is not acquainted with the facts of this case.

M.W-2 is Shambhu Prasad Srivastava this witness is desk officer is State Bank of India Zonal office, Bhagalpur. He stated that he was branch manager at ADB Ghogha from 17.07.2004 to 16.06.2006. He is acquainted with workman Shashi Bhushan Prasad. He was permanent manager at Ghogha branch. He never permanently took work from Shashi Bhushan Prasad. Shashi Bhushan Prasad was working to serve water at different rate and payment was made from petty cash. Shashi Bhushan Prasad never raised dispute of being regular or permanent employee. No appointment letter was issued to him.

In cross-examination this witness stated that he used to take work from Shashi Bhushan Prasad to take water and payment was made to him. Seldom payment was made to him @ Rs. 30/- and seldom @ Rs. 40/-. Shashi Bhushan Prasad working in the branch before joining of this witness in that branch. Details of payment from petty cash is maintained in a register which used to be cheque once in a month by branch manager. This witness posted in that branch for about 2 years and Shashi Bhushan Prasad worked in that branch irregularly. This witness never took work from Shashi Bhushan Prasad to bring stationary or cheque from other branch.

He further stated that on 10.03.2006 he has given order to Shashi Bhushan Prasad for bringing stationary and another order dated- 23.02.2007 is to bring cheque but this witness could not say that order is under signature of then branch manager. Letter dated-14.09.2002 has been signed by then branch manager Sri R.K.Pandey which has been marked as Ext.- W/3. He denied that Shashi Bhushan Prasad also worked as messenger apart from bringing water.

M.W-3 is Ajay Kumar, Branch Manager, in SBI at Ghogha Branch. He has proved photo stat of petty cash register for the period from 13.04.2002 to 31.03.2009.

In cross-examination this witness stated that for the period from 30.04.2004 to 31.08.2008 he was at Dhamsain

branch, Dist. Godda, P.B. branch, Bhagalpur town, Bhagalpur city branch Bhagalpur, Zonal office Bhagalpur. Some where he was posted as branch manager and some where he was post as accountant, field officer. This witness identified Shashi Bhushan Prasad from face but not by name. When he was joined at Ghogha Branch Dist. Bhagalpur, then he learnt that Shashai Bhushan Prasad has filed case before this tribunal. This witness has brought photo stat of concerned ledger, petty cash register which has been attested by him marked as Ext.- M/10. He further stated that he had seen the document filed by him. He had seen the related documents of this case but this witness has not details knowledge of first working day and last working day. Before termination notice, notice pay and compensation was not paid to the workman and there is no mention of these matter in the ledger.

11. Documents exhibited on behalf of the management Ext.- M/1 is order passed by the Hon'ble High Court in C.W.J.C No.- 5287 of 2009 dated 23.04.2009. Writ was dismissed as withdrawn with a direction that in proceeding before Industrial Tribunal is to be decided in accordance with law uninfluenced by the refusal by the Hon'ble Court to interfere only because of the availability of an alternative statutory remedy to the petitioner.

Ext.- M/2 is School Transfer Certificate of Shashi Bhushan Prasad in which date of birth of certificate in 31.03.1988.

Ext.- M/3 to M/9 is photostat of petty cash register of the concerned year 2000-2009.

Ext.-M/8 it appears from Ext.-M/8 that cost of labour charge was paid regularly from 01.08.2007 to 13.09.2008 and thereafter only cost of has been written. Cost of what purpose has been made has not been maintained in cost register.

Ext.-M/9 cost of conveyance charge has been mentioned.

Ext.-M/10 is the also photostat of petty cash register for the period April 2002 in which cost of water has been mentioned. Cost of water and cost of labour charge etc has been mentioned.

12. Written argument has been filed on behalf of the management stating therein application filed by the claimant is not maintainable in law nor on facts. Terms of reference is not only illegal but also contradictory. Section-2A (1) and (2) of the Industrial Dispute Act is confined to termination of service and not regularization of service. Sri Shashi Bhushan Prasad was engaged as and when exigency of work arose on the daily basis and whenever work was taken from him, he was paid his wages as agreed between the parties. He performed works in the State Bank of India, ADB, Ghogha Branch as and when instructions was given by the Branch Manager. He claimed that he worked since 30.04.2000 till Agusut, 2008 continuously is

totally baseless and false. Claim that he worked continuously for a period of 240 days in a calendar year is also false. He used to discharge his duties on the days he was engaged on the instructions of branch manager. Such discharge of duties were of casual nature and it cannot be said to be termination or perennial nature to discharge regular duties. Regular appointment are made who work as regular staff of the bank. Sri Prasad was wholly aware of the fact that the bank has its own rules of recruitment and his casual engagement as daily wagger as and when required therein no compliance of the rules of recruitment of the Bank. During the whole period of his work as claimed by him, he never demanded for regularization of service. When he could not get any engagement in the bank even as casual daily wagger, he started demanding regularization. Regularization in service is not a mode of appointment. Neither the Government nor their instrumentality can make appointment dehors the constitutional scheme of public appointment. Neither any vacancy was advertised nor any requisition to the Employment Exchange was sent nor the Branch Manager had any power to appoint subordinate staff. His engagement was totally non-est. Merely because a daily wagger as such a temporary worker is continued for long time, he would not be entitled to be absorbed in regular service or made permanent. In the instant case, his claim that he worked from 2000 to 2008 and that too continuously is wholly baseless. Hon'ble Supreme Court in the case of State of Karnataka Vs. Uma Devi [2004(4) SCC 1] has held that merely because a temporary or casual employee has continued for a long time, he would not be entitled to be absorbed in regular service or made permanent. In view of decision State of MP Vs. Lalit Kumar Verma [2007 (1) SCC 575] "the appointment made in total disregard to the constitutional scheme as also the recruitment rules framed by the employer, which is state within the meaning of article 12 of the constitution of India, the recruitment would be illegal one." Another decision referred is M.L. Jain Vs. Indore Development Authority [2005 (1) SCC 639] "Regularization cannot be claimed as matter of right. An illegal appointment cannot be legalized by taking to regularization. The constitutional scheme which the country has adopted does not contemplate any back door appointment.

It has further been submitted that section 2 (oo) of the Industrial Dispute Act says that retrenchment means termination by the employer of the service of a workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. The case of Shashi Bhushan Prasad clearly follows u/s 2(oo) (bb) there was an implied agreement between the parties that his engagement comes to an end as soon as he leaves the bank meaning thereby that there was an oral agreement between the parties regarding this type of engagement. Even decision of Escorts Limited Vs. Presiding Officer and others [1997 (11) SCC 521] has been referred for the

purposes that termination of service of the workmen does not constitute retrenchment. Further decision has been referred again it has been submitted that “the distinction between “irregular appointment” and “illegal appointment” is apparent. In the event appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is a part of the “State” within the meaning of article 12 of the constitutional, the recruitment would be an illegal one. The respondent was not appointed in terms of the statutory rules. He was not entitled to any regular scale of pay attached to any post. Therefore, he could not have been directed to be regularised in service having regard to the Constitution Bench. Hence, the Labour Court or Industrial Tribunal as also the High Court were not correct in directing regularization of service of the respondent.” The appointment of Sri Prasad was not made in terms of statutory rules. Original appointment of Sri Prasad being illegal and not irregular. Therefore, no question arises of regularization of Sri Prasad.

The decision of ESCOOTS LIMITED Vs. PRESIDING OFFICER AND ANOTHER has been filed in which it has been held that “Temporary appointment for a specified period (2 months in this case)—Terms of appointment enabling the employer to terminate the service at any stage without assigning any reason—In such circumstances, termination of service under the said terms even though effected before the expiry of the specified period, held, did not amount to retrenchment. But in this case it has not been demonstrated the temporary appointment for a specific period of 2 months or for any specified period.

Next decision is reported case of “MAHENDRA L. JAIN AND OTHERS Vs. INDORE DEVELOPMENT AUTHORITY AND OTHERS” In which it has been held that irregular appointments, not illegal appointments, held, can be regularised—Sub-Engineers (appellants) appointed on daily-wage basis under a project to be executed by respondent Development Authority—No appointment letters issued—Posts not sanctioned by Govt.. Appointment not in compliance with the requirements of Act and Rules which were applicable in absence of any direction to the contrary contained in Standing Orders—Held, such illegal appointment were void ab initio.

In the case of STATE OF M.P AND OTHERS Vs. LALIT KUMAR VERMA it has been held that Necessity of initial appointment being “irregular” and not “illegal”. Respondent not having appointed as per the rules, nor being entitled to any regular scale of pay attached to any post, his appointment was illegal and not irregular. Continuous work for more than six months on daily wages without more, held, is not sufficient to entitle workman concerned to status of permanent employee.

13. Written argument has been filed on behalf of the workman stating therein that subject matter of the adjudication before this tribunal is “Whether the action of the management of State Bank of India, Ghogha Branch in denying regularization of services of Sri Shashi Bhushan Prasad as a Messenger / Peon and terminating his services in violation of Section 25 F of the I.D. Act is legal and justified? If not, what relief (S) the workman is entitled to?”

It has been stated that workman was appointed as a messenger/peon w.e.f. 30.04.2000. He used to work from 10 A.M to 6 P.M regularly for which he was paid wages initially @ 15/- per day which was raised to @ Rs 25/-, Rs. 40/- and lastly @ Rs. 50/- per day. Payment was made through vouchers. He worked continuously from 30.04.2000 to 06.03.2009 and was informed at the closing hour on 06.03.2009 that his services stood terminated. When the workman went to attend his duties on the following day, he was stopped from working and was informed that his services stood terminated after the working of 06.03.2009. Neither notice, nor any notice pay nor any retrenchment compensation was given to him. But duty was perennial in nature. Case of the workman is covered under Section 2 (OO) of the I.D. Act, 1947 and the management violated the mandatory provisions as contained in section 25 F of the I.D. Act, 1947. Workman prays for reinstatement of his services as a messenger with back wages. Substance of written statement of the management has been delt. Further in reference of the evidence it has been stated that Ext.- W/1 to W/3 supported of the work of the workman. Ext.-W/4 is details of work of the workman. Ext.- W/5 is proof of payment of sum of Rs. 890/-. Ext.-W/6 is the on live statement and Ext.-W/7 and Ext.-W/8 are the certificates of Sri Janardan Pandey Chief Cashier, SBI, ADB, Ghogha Branch. In support of work of Shashi Bhushan Prasad. Ext.-W/9, W/10, and W/11 are the authorization for performing certain works. Ext.W/12 is the letter dt- 15.02.2006 addressed to Secretary, Lok Adalat, Bhagalpur. Ext.-W/13 is the proof of payment in 20 pages. Ext.-W/14 & W/15 relate to payment of wages. Ext.-W/16, W/17, W/18 relates to formulation of a scheme by State Bank of India for absorption of daily rated/ temporary workers performing the jobs as a messenger. The workman was covered under the scheme and accordingly his application for absorption was forwarded by the Branch Manager to Regional Office and other higher offices.

M.W-1 Sri Anil Kumar Singh, Branch Manager, SBI, ADB Ghogha submitted that he knew Shashi Bhushan Prasad who worked as temporary daily rated worker as per requirement and did not work continuously. In cross-examination he admit that his services were utilized for bringing cheque collection advice, distribution of letters, bringing stationary from Zonal Stationary Deptt. Bhagalpur. He further admits that the work of messenger relates to

bringing cheque collection advice, bringing stationary etc. In cross- examination he had deposed that workman did not work for 240 days preceeding his termination but failed to submit the actual number of days he worked.

M.W-2 is Sri Shambhu Prasad Srivastava, he worked as Manager from 17.07.2004 to 16.06.2006 and also admitted that the workman worked at SBI, ADB Ghogha Branch. In cross- examination he admitted that the workman was working prior to his posting at Ghogha Branch.

M.W-3 Ajay Kumar is the present Branch Manager of SBI, ADB, Ghogha Branch and admitted in cross-examination that he does not know the first and last working day of the workman. He was neither given any notice, notice pay or retrenchment compensation preceding his termination.

W.W-1 Shashi Bhushan Prasad stated that he worked from 30.04.2000 to 06.03.2009 at SBI ADB Ghogha Branch as messenger / peon. He used to discharge the duties such as taking out ledger, cash box, peon book, attending post office work, bringing stationary, distribution of notice in the village, serving water to the members of staff. His duty hour ranged from 10 A.M to 5.30 P.M. His duties were identical to that of a permanent messenger. He identified the letter of Sri Janardan Prasad Pandey, chief office (Ext. W/7 & W.8).

Further submitted is that on the basis of material on record the workman worked from 30.04.2000 to 06.03.2009; (ii) The workman discharged all the duties of a messenger; (iii) He used to discharge his duties from 10 A.M to 5.30 P.M; (iv) He was being paid his wages through petty cash vouchers; (v) The Bank formulated a scheme for absorption of temporary / daily rated workers as messengers; (vi) The name of the workman had been forwarded by the Branch Manager to Regional / Zonal Office, Bhagalpur which are Exts.- W/16, W/16/A, W/17 & W/18; (vii) The termination of the workman is covered under section 2 (oo) of the I.D.Act; (viii) Management violated the mandatory provisions as contained in section 25 F of the I.D.Act; (ix) Management resorted to unfair labour practices as per schedule V of the I.D.Act; and did not follow the principles of equal pay for equal work;

Relief (S) (i) Reinstatement as a temporary messenger; (ii) Payment of back wages from the date of termination; (iii) Absorption as messenger as per Bank's circular dated- 2.1.2003, 23.12.2002 and as per Exts W/17 & W/18; (iv) Payment of Rs 10000/- as cost for contesting the dispute.

Some decisions has been cited on behalf of the workman. Out of which the decision of Hon'ble Patna High Court in Mithilesh Kumar Singh Vs State of Bihar and Ors. In which petitioner was a workman in working in the work department of Public Works Department Bulling Circle, Purnia in this case reference was made " Whether the

termination of service of Shri Mithilesh Kumar Singh, Treasure Guard, Public Works Department, Building Circle, Purnia, by the management from December, 15, 1992 is proper and justified? If not, whether he is entitled to reinstatement and/or any other relief?"

In this case petitioner was initially appointed on-muster roll as a daily wager. He continuously worked for over three months and thereafter he was appointed in a regular time-scale of pay as Treasure Guard on a temporary and ad hoc basis. But on August 26, 1992 he was asked to file a show why his appointment may not be terminated. In written statement of the management it was stated that initially appointment /engagement was illegal and invalid and did not confer any right upon him and, hence, it could be terminated without a month's notice or payment in lieu of notice and without paying the retrenchment compensation. Labour Court in the impugned award upheld the management contention that petitioner appointment was illegal and invalid and was made without any advertisement or any selection process. There was no sanctioned post against which the appointment could be made. Labour Court relied upon the decisions reported in 1986 PLJR 873 and 1987 PLJR 1090 in this decision it was held in case of initial appointment was invalid the concerned employee could not claim a writ of mandamus for payment of salary for the period he actually worked under the invalid appointment. These two decisions also do not even refer much less consider the mandatory nature of Section 25-F and have absolutely no relevance to the case in hand. The idea of illegal or invalid appointments is quite foreign to the scheme of the Industrial Disputes Act. For application of section 25-F is that the concerned workman should have been in continuous service for 240 days in a calendar year. In fact, the termination of employment of a workman on the ground that his initial appointment was not legal and valid itself qualifies as retrenchment within the meaning of Section 2(oo) as termination for illegal and invalid appointment has not been made an exception to the definition of retrenchment. This aspect of the matter has been considered in a Division Bench decision of the Rajasthan High Court in the case of Prabhudayal Vs. Alwar Sahkari Bhumi Vikas Bank Ltd. And Ors., in which it has been held that "The definition of retrenchment as given in the Act is wide and comprehensive to include all types of terminations of service unless the termination falls within any of the excepted categories and it was held that the termination of service of the petitioner amounts to retrenchment and was statutorily required to be in compliance with the provision of Section 25-F of the I.D.Act.

Another decisions is of the Supreme Court of India in Mineral Exploration Corporation Vs. Mineral Exploration Corporation which was decided on 26th July, 2006 in Appeal (civil) 2027-2028 of 2000. In this case according to the union workman engaged in Mineral Exploration

Corporation Ltd., hereinafter referred to as “ the Corporation” have completed minimum 8 years and maximum 20 years of service but they were not regularized nor paid regular wages as per the revision of pay scales. The workmen started demanding regular pay scale and their regularization, corporation resorted to retrenchment of workmen which caused serious Industrial unrest. Reference was made “Whether the action of the management of Mineral Exploration Corporation Ltd., Nagpur in not regularizing the services of S/Shri A.K.Janson 2144 others (as per Annexures’A’ attached) and depriving them all fringe benefits like permanent workers is justified? If not, to what relief the concerned workmen are entitled to and from what date? The tribunal after recording the evidence of the both parties and considering the arguments vide its award dated 24.03.1998, held that all the workman in dispute, workman be regularized in the service. The corporation preferred writ petition before the High Court which was allowed and award was set-aside. The High Court affirmed the findings of the Tribunal. It has been stated that all the time of hearing, our attention was drawn to the judgement delivered by the Hon’ble Court in the case of Secretary, State of Karnataka & Ors. Vs. Umadevi, 3 and Ors., [2006]4 SCC and it has been held that the said case deals with public employment, absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees appointed / recruited and continued for long in public employment de hors the constitutional scheme of public employment. Further it has been stated that one aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967] 3 SCR 128, R.N. Nanjundappa [1972]2 SCR 799, and B.N. Nagarajan [1979]3 SCR 937, of dully qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of order of the courts or of tribunals. The question of regularization of the service of such employees may have to be considered on merit in the light of the principles settled by this Court in the case above referred to and in the light of this judgement. The Union of India, the State Government and their instrumentalities should take step to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts. It has also been stated that respondent an industry governed by I.D. Act, 1947 as well as the provision of Industrial Employment Standing Order Act, 1946 the standing order define contingent / temporary and casual employee as under the temporary workman as one who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period. The casual workman is a workman whose employment is of casual labour. Therefore it will be clear that employees engaged and

continued together cann’t be termed as temporary or casuals.

Another decisions is the decision of Hon’ble S.C in case of Dhirendra Chamoli And Anr. Vs. State of U.P which was decided on 5 August, 1985 in citations 1986(52) FLR147, (1986)ILLJ134SC, (1986)I SCC 637. The Writ petition the complaint made is that there are a number of person who are engaged by Nehru Kendra as casual workers on daily basis and though they are doing the same work as is performed by class IV employees appointed on regular basis, they are not being given the same salary and allowance as are being paid to class IV employee. In this case writ petition were allowed and rules was make absolute and directed the Central Government to accord to these person who are employed by the Nehru Kendras and who are concededly performing the same duties as class IV employees, the same salary and conditions of service as are being received by class IV employee, except regularisation which cannot be done since there are no sanctioned posts. But we hope and trust that posts will be sanctioned by the Central Government in die different Nehru Yuvak Kendras, so these persons can be regularised. It is not at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations who have been in existence for over 12 years. The salary and allowance of class IV employees shall be given to these persons employed in Nehru Yuvak Kendras with effect from the date when they were respectively employed. Another decision has been referred of the Supreme Court of India, in Harjinder Singh Vs. Punjab State Warehousing Corp. decided on 5th January, 2010, in civil appeal no.- 587 of 2010 in which termination of the service of the workman was found incontinuous version of section 25(G) of the Industrial Dispute Act. But impugned order was liable to be set aside. Another decision is also of the Hon’ble Supreme Court of India in Devinder Singh Vs. Municipal Council, Sanaur which was decided on 11th April, 2011 in this case service was terminated without holding any enquiry and without giving him notice and compensation and that persons junior to him were retained in service. Respondent pleaded that the appellant was engaged on contract basis and his service was terminated because the Director, Local Self Government did not give approval to the resolution passed for his employment. The Labour Court held that the appellant had worked for more than 240 days in a calendar year preceding the termination of his service. Writ petition reliance was based on the judgement in Secy.. State of Karnataka Vs. Umadevi (2006)1 SCC 1; State of M.P. Vs. Lalit Kumar Verma (2007)1 SCC 575; Uttranchal Forest Development Corporation Vs. M.C. Joshi (2007(2) SCC (L&S) 813; M.P. Administration Vs. Tribhuban (2007)9 SCC 748; and others decision are the found adopted that Labour Court should not have ordered

reinstatement of the appellant because his appointment was contrary to the recruitment rules and Articles 14 and 16 of the Constitution and it would not be in public interest to sustain the award of reinstatement after long lapse of time. In para 13 it has been stated that source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. Further in para 14 it has been stated that it is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. In the result the appeal was allowed and award passed by the Labour Court for reinstatement of the appellant is restored and it was also directed that respondent shall be entitled to wages for the period between the date of award and the date of actual reinstatement.

Another decision reported in 2014-III-LLJ-772 Calcutta High Court. Another decision is Hon'ble Supreme Court of India in case of Hari Nandan Prasad & Anr. Vs. Employer I/R to Mangmt. of FCI & Anr. In which the tribunal found that termination of the applicant was illegal they were directed to be reinstated with 50% back wages. FCI filed writ petition which were dismissed. LPA was allowed by Division Bench. In this case reference was that "Whether the action of the management of Food Corporation of India, in retrenchment Shri Hari Nandan Prasad, Ex-Casual workman, in contravention of Section 25-F of the I.D. Act, 1947 and denying reinstatement with full back wages and regularization of his service is legal and justified? If not, to what relief the concerned workman is entitled to?" In this case decision of Delhi Development Horticulture Employees Union Vs. Delhi Administration AIR 1992 SC 789 and Constitution bench judgement in the case of Secretary, State of Karnataka Vs. Uma Devi & Ors. (2006) 4 SCC 1 has been dealt. In this case contention raised by the appellants before the High Court was that the ratio of Uma Devi's case had no relevance in the cases of industrial adjudication by the Labour Courts/Industrial Tribunals and this submission that found to be meritless by the Hon'ble High Court taking support of the judgement of this Court in U.P. Power Corporation Vs. Bijli Mazdoor Sangh & Ors. (2007) 5 SCC 755. In this case which was found that appellant No.-1 was not in service on the date when scheme was promulgated i.e as on 6.5.1987 as his services were dispensed with 4 years before that circular saw the light of day. Therefore, in the result of monetary compensation in lieu of reinstatement would be more appropriate in his case but in case of appellant No.-2 which was held that CGIT rightly held that he was reinstate with 50% back wages

FINDINGS

14. The relief claimed in this case is against the management of State Bank of India over denial of regularization of the services as a messenger/peon and wrongfully termination for the service of a temporary messenger/ peon w.e.f 06.03.2009 while working at State Bank of India, Agriculture Development Branch, Ghogha, Dist.- Bhagalpur.

15. Dispute has been raised on 19.06.2009 and the conciliation proceedings ended in failure on 27.08.2010. Question formulated and by the petitioner in this case is "Whether the action of the Management of State Bank of India, Ghogha Branch in denying regularization of services of Sri Shashi Bhushan Prasad as a Messenger/Peon and terminating his services in violation of Section 25 F of the I.D.Act is legal and justified? If not, what relief (S) the workman is entitled to?"

16. The workman was working from 30.04.2000 to 06.03.2009 and was informed at the close of office hour on 06.03.2009 that his services stood terminated. When the workman went to discharge his duties on the following day, he was stopped from working and was again informed of termination of his services from the evening of 06.03.2009. Neither he was given any notice nor notice pay nor retrenchment compensation preceeding his termination. He was paid his wages regularly from 30.04.2000 to 31.08.2008. On 01.09.2008, the workman was instructed by the authority to take payment in different names to which the workman did not agree. He was not made payment of his wages from 01.09.2008 to 06.03.2009. The termination of the workman is covered under Section 2(oo) of the I.D.Act, 1947. Relief claim is (i) Reinstatement, as a temporary messenger with back wages; (ii) Regularization of services as a messenger; (iii) Payment of due wages for the period of working; (iv) Payment of wages from 31.08.2008 to 06.03.2009; (v) Payment of a sum of Rs. 10000/- for contesting the dispute.

17. Written statement of the management stating that therein that application filed by the claimant u/s 2A (1) and (2) of the amended Industrial Dispute Act, 2010 is neither maintainable in law nor on fact. Dispute have not been referred u/s 10(1)(d) of the Industrial Dispute Act. Terms of reference has framed by the person is not only illegal but also contradictory. Section 2A (1) and (2) is confined termination of service and not regularization in service.

It appears from perusal of Section-2A of the Industrial Dispute Act, it appears that this relates to dismissal etc. of a individual workman to be deemed to be an Industrial Dispute.

18. Section-2[(A)] Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference

between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute.

19. This section also provide that workman may make an application direct to the Labour Court or Tribunal for adjudication to the dispute is referred therein after expiry of forty five from the date from the date he has made the application to the Conciliation Officer of the appropriate Government. This case has been filed on 18.03.2011 as such the case is maintainable.

Section-2A relates to discharge, dismisses, retrenches or otherwise terminates the services of an individual workman. So far the matter is concerned for regularisation that will be discussed later on. Further it has been stated that it is totally baseless and denied that workman had worked continuously 240 days in every calendar years.

20. Further it has been stated that bank has its own rules of recruitment for appointment of subordinate cadre staff satisfying the requirement of Article 14 and 16 of the Constitution of India. He was not issued any appointment letter even to work as temporary staff. His engagement was purely as a casual worker on daily wages engaged as and when required. Payment were made to him through petty cash which means payment against some expenses which are in petty nature and that cannot be termed as regular payment of wages or other benefit. Had therein appointment letter then it would proof terms of appointment of the workman. Further it has been stated that during the whole period of his work as claimed by him, he never demanding for regularization in service. It is only when he could not get any engagement in the Bank even as casual daily wager, he started demanding regularization. Another contention is that merely because a daily wager as such a temporary worker is continued for long time, he would not be entitled to be absorbed in regular service or made permanent. His claim that he worked from 2000 to 2008 and that too continuously is wholly baseless.

About the case of State of Karnataka Vs Uma Devi reported in [2004(4) SCC 1] has been stated but this case only relates to Government service and it cannot said that bank is not an industry. When bank is an industry then the dispute will be governed under the provision of the Industrial Dispute Act. In this contest several decision has been filed on behalf of the workman which are Mithilesh Kumar Singh Vs State of Bihar and Ors reported in 1994 (42) BLJR 1300, (1995) 1 LLJ 973 Pat. On the Mineral Exploration corporation Vs Mineral Exploration corporation by Hon'ble Supreme court of India. Further the case of Dharendra Chamoli and Anr. Vs State of U.P decision by Hon'ble Supreme Court of India and reported in 1986 (52) FLR 147, (1986) 1 LLJ 134 SC, (1986) 1 SCC 637

and other so many decisions in which several decisions has been discussed. Other case is Devinder Singh Vs Municipal Council, Sanaur decided by Hon'ble Supreme Court of India in which case of Uma Devi has also been dealt and other decision cited by the management bank has been dealt. Further it has been stated that by order dated-27.04.2009 in case of C.W.J.C No.- 5287 of 2009 filed by the petitioner, the Hon'ble Court hold that the person concerned is daily wager. As there is no provision in the bank for regularization of such a daily wager.

21. In the rejoinder of the workman in para-13 it has been stated that workman discharged the duties of a messenger from 30.04.2000 to 06.03.2009 uninterruptedly. To continue a workman for a longer period without any service condition is a act of unfair Labour Practice on the part of the management as per schedule V of Industrial Dispute Act, 1947. Further it has been stated that remedy of Industrial worker is under Industrial Dispute Act.

22. In the evidence of Shashi Bhushan Prasad has stated that he worked in the State Bank of India, ADB, Ghogha Branch, Dist.- Bhagalpur as a messenger/peon from 30.04.2000 to 06.03.2009. He worked from 10 A.M to 5.30 P.M. He worked like a permanent messenger in one year. He worked for 240 days regularly. He has proved Exts.-W/5 & W/6 regarding his payment by then branch manager of Rs. 890/-. He has also proved Exts.-W/7 and Exts.-W/8 and other documents filed by him. He has also proved photo stat of vouchers in 66 pages for the period from 31.12.2006 to 31.12.2007 he has also proof circular sent by branch manager to Zonal office on 21.03.2003 and dated-02.01.2001 and 02.01.2002. He has stated that his date of birth is 05.09.1981 but by mistake that was written 31.03.1988 which was rectified. He has also stated that no compensation and no payment was made to him before removal from service.

In cross-examination he has stated that Exts.-W/14 relates to the payment for serving water and for cheque collection. In para-2 of the cross-examination he has stated that Janardhan Pandey was cash officer at Ghogha branch. In certificate his date of birth is mentioned year 1981 but his another certificate by mistake it was written year 1988 and that mistake was corrected. He regularly worked for 240 days. In further cross-examination he stated that it is wrong to say that he himself left to come to bank. He daily used to go bank. Nothing was challenged in the cross-examination that this workman was not working for 240 days in a calendar year or he did not work in the bank from 30.04.2000 to 06.03.2009.

23. Management witness M.W-1 Anil Kumar Singh who is Dy. Manager in SBI Bhagalpur branch. He has stated that he was posted at ADB Ghogha Branch for the period August-2007 to September-2008. Shashi Bhushan Prasad was temporary daily wager. He did not work regularly. He further stated that claim for regularisation his service is

wrong. In view of the order passed in C.W.J.C No.- 2587 of 2009 by Hon'ble Patna High Court. He has also stated that photo stat of petty cash book has been filed by the bank. There is rule for recruitment of sub-ordinate cadre staff. No appointment letter was issued. He worked as per order of Branch Manager and work was casual in nature. There is no provision to regularise a daily wager, who worker for the long period. He was not entitled for any compensation or notice.

In cross-examination he has stated that he posted at ADB Ghogha Branch for the period from August-2007 to Septemeber-2008. He does not know first working day and last working day of Shashi Bhushan Prasad. Payment was made after two or half month on submitting the bill. He does not know in preceeding period counted from 06.03.2009 Shashi Bhushan Prasad had not work for 240 days. He could not tell in year prior to 06.03.2009 for how many days Shashi Bhushan Prasad had worked. There will be record in bank for the payment made by the bank to him. He has also stated about the authority letter given to him Shashi Bhushan Prasad for receiving maturity cheque of K.V.P from Bhagalpur post office. He proved authority letter given to him for receiving advice of cheque collection from Munger which was signed by branch manager namely Anil Kumar Ambastha. He has also proved contents of Ext.-W/2. Duty of messenger is to distribute local letter and to go to post office for dispatching the out side letter.

24. Next witness on behalf of the management Shambhu Prasad Srivastava who was posted at ADB Ghogha Branch from 17.07.2004 to 16.06.2006 he is acquainted with Shashi Bhushan Prasad. He stated that he did not took work from Shashi Bhushan Prasad for the whole day mainly.

In cross- examination he has stated that Shashi Bhushan Prasad was working in the branch prior to joining this witness. Payment of petty cash is entered in one register which is checked once in a month by branch manager. During the period of two years Shashi Bhushan Prasad irregularly attendant the branch. He has given work on 10.03.2006 to Shashi Bhushan Prasad to bring stationary.

25. Management witness no.-3 is Ajay Kumar, Branch Manager in SBI Ghogha Branch who deposited photo stat of petty cash register from 13.04.2002 to 31.03.2009. He stated that for the period from 30.04.2004 to 31.08.2008 he was posted at Ghamsain branch Dist.- Godda, PB Branch, Bhagalpur city branch and Zonal office Bhagalpur. He identify the Shashi Bhushan Prasad but was not acquainted with his name. Prior to remove from the service workman was not given notice, notice pay and retrenchment compensation.

26. Ten documents has been Exhibited on behalf of the management. M.W-1 is photo stat of the order passed in C.W.J.C No.- 5287 of 2009 filed by Shashi Bhushan Prasad.

In which it has been stated that in his own plea as para-8 involved the question of facts and claim under the Industrial Dispute Act. Where a daily wages post cannot lay out his claim in a writ petition. Learned council of the petitioner press for leave to withdraw this petition to persue his remedy under the Industrial Dispute Act.

It is for the petitioner to choose his remedy after writ court declined interference. This court makes no observation with the regards to the case. The writ is dismissed as withdrawn. The proceeding before Industrial Tribunal is to be decided in accordance with law uninfluenced by refusal by this court. So matter is to be decided by this tribunal. Ext.-M/2 is SLC in which date of birth has been mentioned as 31.03.1988. This has got no relevency when corrected SLC has been submitted by the Shashi Bhushan Prasad. Ext.-M/3 to M/9 is photo stat of petty cash register.

In the written statement the management bank, claim of the workman that he worked since 30.04.2000 to August-2008 worked continuously 240 days in every calendar year, have also denied. Management witness no.-1 Anil Kumar Singh, in cross-examination in para-29 could not say the first working day and last working day of Shashi Bhushan Prasad. But during the period of post of this witness he was paid Rs. 50/-. This witness also could not tell prior to 06.03.2009 for how many days workman worked and what period of less than 240 days. This witness is para-32 identified the authority letter given of Shashi Bhushan Prasad when he was sent for work to post office etc. As such it is apparent that Shashi Bhushan Prasad working in the bank. M.W-2 Shambhu Prasad Srivastava was posted at Ghogha Branch from the period from 17.07.2004 to 16.06.2006 and he identified workman Sri Shashi Bhushan Prasad. He further stated that in para-7 in cross-examination that prior his posting on that branch Shashi Bhushan Prasad worked there.

27. M.W-3 Ajay Kumar has identified petty cash register from the period 13.04.2002 to 31.03.2009. This witness identified Shashi Bhushan Prasad by face but this could not tale first and last working day of Shashi Bhushan Prasad. From petty cash register counting from March, 2008 only cost of labour, tea, labour charge and etc shown, but to whom payment was made has been no been shown. So it could not be gather to whom payment was made.

28. From evidence of W.W-1 Shashi Bhushan Prasad it appears that he was working on the post of messenger / peon from the period 30.04.2000 to 06.03.2009. He has stated that payment was made to him from petty cash. He has exhibited details of his working day *vide* Ext.W/4. From which is appears that he worked for 295 in the year 2008 and 57 days in the year 2009 this documents has been exhibited without objection. He has also exhibited print out of online statement Ext.-W/6 which is in name of Shashi Bhushan Prasad which is dated-24.12.2008.

Ext.-W/2 is the letter sent to S.B.I Zonal Stationary Deptt for bringing stationary dated- 10.03.2006 and signature of Shashi Bhushan Prasad has been attested.

29. Exts.-W/7 is the letter sent by Mr Janardhan Prasad Pandey, cash officer S.B.I, ADB, Ghogha Branch, Bhagalpur to branch manager SBI that Shashi Bhushan Prasad has been working at this branch from 30.04.2000 as daily wage worker. His payment in petty cash book has always been segregated in labour charges. This letter was sent information and needful. From this letter it appears that Shashi Bhushan Prasad was working from 30.04.2000 and letter is dated 04.10.2005 from it appears that he was still working there. Exts.-W/8 is another letter sent by same Janardhan Prasad Pandey to Branch Manager, SBI, ADB, Ghogha Branch. From which it appears that Shashi Bhushan Prasad was working since 30.04.2000 in the bank as daily wages this letter is dated- 04.10.2005. Exts.- W/9 is letter sent by Branch Manager from Ghogha branch to Sub post master, Bhagalpur for payment of KVP this letter is dated-02.12.2008 and signature of Shashi Bhushan Prasad has been attested from which it appears that till 02.12.2008 Shashi Bhushan Prasad was working there. Another letter was sent by the Branch Manager vide Ext.-W/10 in which signature of Shashi Bhushan Prasad was attested in which it has been stated that NSC payment in favour of Branch Manager has been captioned. Ext.-W/11 has also been to Chief Manager, SBI, Bhagalpur in which signature of Shashi Bhushan Prasad has been attested. Exts.-W/12 is the letter sent through Shashi Bhushan Prasad whose signature was attested as such Shashi Bhushan Prasad working regularly. Exts.-W/13 series is regard to the payment receipts by Shashi Bhushan Prasad on 24.12.2001, 15.02.2002, 22.12.2001 and several dates working in records shows.

30. Exts.-W/14 series is the details of payment paid to Shashi Bhsuhan Prasad from the period 23.01.2007 to 31.12.2007 this indicates that Shashi Bhushan Prasad was working in the bank for the period 240 days in the year 2007. Exts.-W/15 is the letter sent by A.G.M, Circle Office, Bhagalpur in regard to subordinate temporary employee and Exts.-W/16 is also letter to Circle Development office. It is observed that inspite of instruction some workmen are working and legal complication arising if on becoming them protected employee under the Industrial Dispute Act, 1947. Exts.-W/17 in which it has been stated that please arrange to submit full particulars of all such employees who have put in more than 240 days continuous service in terms of Section 25(B) of the Industrial Dispute Act together with your reasoned recommendation for their absorption or other wise on enclosed proforma immediately. It means that the bank was aware of provisions of I.D.Act, 1947. From Exts.-W/18 it appears that branch

manager has sent letter to A.G.M, Bhagalpur stating therein that Shashi Bhushan Prasad was working there from 30.04.2000 as water boys to from there Exts, it appears that he was also doing other work because his signature is attested when he was sent to another place and from Exts.-W/14 it appears that he regularly worked for the period from 31.12.2006 to 31.12.2007. This documents has not been challenged. Apparently Shashi Bhushan Prasad worked for more than 240 days in the year 2007 as such he became protected employee under the I.D.Act. From Exts.-W/9, 10, it appears that he was sent for receiving payment of K.V.P on 02.12.2008 and for receiving payment of NSC on 08.11.2008. In cross-examination M.W-1 has stated that regular payment was not paid to the workman because bill was being submitted after two and half months then payment was made. So it may be gathered that he was working always in the bank. Bank has not submitted the vouchers of payment of Shashi Bhushan Prasad and has not demonstrated that how many less date counting from 240 days Shashi Bhushan Prasad was working. In para-34 he has stated that advice cheque of collection and to bring was duty of messenger and from this evidence it appears that Exts. demonstrate that Shashi Bhushan Prasad even working like messenger.

31. From definition of 25(B) and photo stat of payment vouchers it appears that in the year 2007 there was uninterrupted service though this workman was working since 30.04.2000 and even becoming in continuous service from him till 06.03.2009. So prior to is removal compliance of section-25F of the I.D.Act must have been done. Even from Exts.-M/10 it appears that counting from 06.03.2008 labour charge was regularly paid till 28.02.2009. Which is clearly apparent, so inference may be gathered that payment was made to Shashi Bhushan Prasad for the period more than 240 days in a calendar year last preceeding from the date of his removal because bank could not demonstrate who was another or other workman working in the bank and this case relates to Shashi Bhushan Prasad.

32. In view of the decisions of Hon'ble S.C in case of Hari Nandan Prasad & Another Vs Employer I/R to management of FCI & Another when retrenchment is bad then service be regularised. In that view of the matter Shashi Bhushan Prasad had became in the category protected workman. Hence, the case of the workman is allowed. Management is directed to reinstate and regularise the service of workman from the date- 06.03.2009 on which he was removed from service. Further management is directed to give all consequential benefits to the workman and all due wages from the date of his removal from service and upto the date of his reinstatement.

Accordingly the order is being given.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2129.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली नागरिक सहकारी बैंक लि. प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 142/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल-12025/01/2015 आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4 November, 2015

S.O. 2129.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.142/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of Delhi Nagrik Sehkari Bank Ltd. and their workmen, received by the Central Government on 04/11/2015.

[No. L-12025/01/2015—IR (B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT - II, ROOM NO.33, BLOCK-
A, GROUND FLOOR, KARKARDUMA
COURT COMPLEX, KARKARDUMA
DELHI**

Present:- Shri Harbansh Kumar Saxena

ID No. 142/2012

Sh. Anuj Kr. S/o Sh. P.K. Vashishth,
R/o-262, Village & P.O.- Harevali,
Delhi-110039.

.....Workman

Versus

Delhi Nagrik Sehkari Bank Ltd.
Through Its C.E.O/
Administrative Office,
3- C/5 , Opp. Liberty Cinema,
New Rohtak Road,
New Delhi-110005

.....Management

AWARD

Direct claim has been received in this tribunal. Which was register as I.D No. 142/2012 and claimant/workman was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice Sh. Anuj Kumar filed claim statement on 9.11.2012 on behalf of workman. Wherein he prayed as follows:-

It is, therefore, most respectfully prayed that the workman may kindly be reinstated in services with full back wages and continuity of service along with the benefits attached to his services under the law.

Against claim statement management filed written statement on 6.5.2013 through which he denied the contents of claim statement and prayed for dismissal of claim statement.

On the basis of pleadings of parties my Ld. Predecessor framed following issues on 6.5.13:-

1. Whether enquiry conducted by the management is just, fair and proper?
2. Whether punishment awarded to the claimant commensurate to the misconduct of the claimant?
3. Whether claimant is entitled to relief of reinstatement in service?
4. As in terms of reference.

Workman on 8.7.2015 filed rejoinder . Through which he reaffirmed the contents of claim statement.

Workman in support of his case filed affidavit of WW1 Sh. Anuj Kumar on 20.1.2014 and he tendered his affidavit on 8.5.2014.

His statement of tendering of affidavit is as follows:-

I tender in evidence my affidavit Ex. WW1/A which bears my signature at point 'A' and 'B'. I rely upon my documents Ex. WW1/1 to Ex. WW1/7.

None to cross-examined on behalf of management. Hence cross nil and right of management of cross-examination of WW1 has been closed.

Workman in support of his case filed affidavit of WW2 Sh. Phool Kumar on 19.8.2014 and tendered his affidavit on 19.8.2014.

His statement of tendering of affidavit is as follows:-

I tender my affidavit in evidence on behalf of workman it bear my signature at point A and B . Contents of affidavit are true and based on my personal knowledge. Affidavit is marked Ex.WW2/B and copy of annexed documents which relates to service rules is marked Ex. WW2/8.

None to cross-examined on behalf of management. Hence cross nil and right of management of cross-examination has been closed and in the interest of justice 16.9.2014 was fixed for management evidence. On 16.9.2014 in the interest of justice fixed 19.11.2014 for management evidence. On 19.11.2014 management remained dormant then I closed management evidence and fixed 10.12.2014 for ex-parte written arguments of workman.

Workman filed written submission on 12.01.2015. Wherein he stated as follows:-

1. That this Hon'ble court was please to proceed the respondent /management ex-parte as they did not appear deliberately after filing the written statement in the present case. The brief facts of the case are narrated herein below for the convenience of this Hon'ble Court.

a) That the workman filed claim petition vide reference No. F .7/856/ALC/CD/11 dated 21.12.2011 before the conciliation officer, Central District, Delhi. Both the parties were called for the settlement on various dated but no settlement could be arrived at. The appropriate authority then issued a failure report and granted a liberty to the workman to approach this Hon'ble court and to file a claim/ industrial dispute.

b) That the workman herein was appointed as peon cum chawkidar on adhoc basis in the last week of October 2004 and thereafter vide order No. DNSBL/HO/2004-2005 dated 19.4.2004 his services were regularized in the regular pay scale of Rs. 2750-70 3800-75-4400 w.e.f 23.04.2004. That the workman was working with utmost sincerity and he had good satisfactory, unblemished record in the Bank and he was performing his duty sincerely, he had never given any cause of complaint to the management . That to the utter shock of the workman that on 30.07.2009, the workman was illegally arrested by the police of the P.S Keshav Puram, Delhi in connection with FIR No. 217/2009 under section 307/395/397/412/120-B/34 of IPC. That workman was too shock to hear about the offences mentioned in the FIR as he was performing his duties independently and honestly since last many years. That on 18.11.2009 the workman was released on bail by the Hon'ble Court of Session, Rohini, Delhi.

c) That the workman was suspended vide office Order No. DNSBL/HO/2009 -2010/STAFF 3.41/332 dated 3.8.2009 illegally and unjustifiably. That the suspension of the workman became effective from 30.07.2009. That no proper show cause was issued to the workman nor has any explanation been called for by the management, hence, illegal and unwarranted. That on 18.9.2010 the Chief Executive Officer of the Bank issued a false, frivolous and vague charge sheet bearing No. NSBL/HO/2010-2011 /Anj-2/418 dated 18.9.2010 to workman , thereby leveling false, frivolous and vague allegation against the workman of gross misconduct unbecoming of an employee of the Bank

in terms of Rule 20, 21, and 27(IV) of Delhi Nagrik Sehkari Bank Ltd. Staff Services Rules (Amended) March, 2003 alongwith list of documents and witnesses. That on 23.10.2010, the workman submitted his reply to the aforesaid charge sheet, to the Chief Executive Officer of the Bank, there by requesting to withdraw the aforesaid charge sheet.

d) That to the utter surprise of the workman, vide memo No. DNSBL/HO/2010-2011 /Staff 3.108/675 and the order No. DNSBL/HO/2010-2011 /Staff 3.109/676 both dated 29.12.2010, the Chief Executive Officer of the Bank has informed the workman that with reference to workman's reply received in the office of the Bank on 23.10.2010 to the aforesaid charge sheet the Board vide its resolution No. -10.7 (iii) in meeting held on 29.11.2010 allegedly considered the record of his case at length and having regard to the material available on record an serious allegations leveled against him by the police the Board has lost confidence in him, it was therefore decided that he should be removed from the service of the Bank w.e.f 01.12.2010 and that period of his suspension from 30.07.2009 to 30.11.2010 will not be treated as on duty and that however no recovery will be made on account of subsistence allowance paid for this period.

e) That the memo No. DNSBL/HO/2010-2011 /Staff 3.108/ 675 dated 29.12.2010 order No. DNSBL/HO/2010-2011 / Staff 3.109/676 dated 29.12.2010 and resolution No.107(iii) dated 29.11.2010 thereby removing the workman from service by the management is illegal, arbitrary , malafide and vague against the facts and law of the land and against the principles of natural justice and against the service rules 26 and 28 Staff Service Rules of the Delhi Nagrik Sehkari Bank Ltd. and without any basis or evidence and without holding any domestic enquiry and without finding the fact of guilt by any authority or court of law. Hence out rightly illegal and liable to be quashed.

f) That workman having faith in the system filed an appeal on 11.02.2011 before the Chairman , Delhi Nagrik Sehkari Bank Ltd. at administrative office of the Management against the arbitrary order of the CEO of removal of the workman but of no avail. That the above said authority did not give any heed to the appeal of the workman. That the workman sent a reminder dated 09.08.2011 in relation to the reply and disposal of his appeal. That issues pertaining to releasing the 60% of arrears of basic pay revised with effect from dt. 01.01.2006 and bonus which payable to him as on 31st March, 2009 and some issues were also raised in above mentioned reminder /letter. But the management did not reply the same. That the workman approached the Learned Labour Commissioner , Pusa Campus, New Delhi for adjudication of dispute but the management was adamant to their illegal stand and flatly refused to accommodate the workman despite the efforts made by the learned commissioner therein. That workman

is without any job and not earning a penny since his date of illegal termination. He is in a bad economic condition and are under the mental distress and agony. Though he tried his level best to search another gainful employment but his efforts have been failed irretrievably . That the refusal and /or not allowing to work/or no duty/or removal from the job without giving him any opportunity to place his case or to defend himself by the management tantamount to retrenchment.

g) That it is submitted that the management did not conduct the domestic enquiry against the workman and no enquiry report has been provided by the management to the workman. It is pertinent to mention here that the workman has been dismissed from the services by the management while ignoring the prevailing service rules at the particular time. That the management has ignored Rule No. 28, the contents of Rule-28 has been reproduced herein below:- the contents of Rule -28 have been reproduced here under for ready reference.

28. INQUIRY

- i) No order imposing any of the penalties specified in clause (i) to (ix) of the Rule 26 shall be made unless an enquiry is held, as far may be, in the manner provided in central civil services classification control and appeal Rules , 1965. The Appointing Authority may itself inquire into or appoint a suitable person to Inquire into the truth of any imputation of misconduct or misbehavior , against an employee.
- ii) No order imposing any of the minor penalties specified in clauses (i) to (xi) of the Rule above shall be made except after-
 - a) Informing the employee in writing of the proposal to take action against one and of the imputations of misconduct or behavior, on which it is proposed to be taken, and giving to one reasonable opportunity of making such representation as one may wish to make against the proposals.
 - b) Holding an inquiry in the manner laid down in the Rule above in every case in which the disciplinary authority is of the option that such inquiry is necessary;
 - c) Taking the representation, if submitted by the employees under Clause (a) and the record of inquiry, if any, held under clause (b) into consideration.
 - d) Recording a finding on each imputation of misconduct or Misbehavior.

- iii) Notwithstanding anything contained in sub-clause (i) to (ii) , major penalty may be imposed without holding an enquiry in such case where an employee is found guilty of misappropriation of the funds of the bank or indulging in fraudulent transactions by competent authority in the enquiry u/s 59(2) and other relevant sections of the Delhi Cooperative Societies Act, 1972 or held guilty of any such charge by a court of competent jurisdiction.
- iv) Orders made by the disciplinary authority shall be communicated to the employee who shall be supplied a copy of the Enquiry report, if any , held by the discipline authority and a Copy of its finding on each article of charge. Where Disciplinary authority is not the inquiry authority and a statement of the finding of the disciplinary authority together with brief reasons for its disagreement , if any, with the finding of the inquiring authority unless they have already been supplied to him.

It is most respectfully prayed that at the time of suspension of the workman whatever rules were in existence, will be applicable on the workman. Hence, it is clear from the rule above that Management cannot impose the major penalties in absence of court's final verdict in relation to the offence if any committed by the employee. That in the case of answering workman there is no order of any court by which the workman is held guilty and no proper inquiry has been conducted by the management, there is no justification of refusal of inquiry. Therefore, imposing of penalty of removal from service by the management against the workman is a major penalty hence; it is illegal, unjust and unfair and the same is contrary to the provisions of service rules.

2. That the respondent has not taken any major objection in relation to the claim statement. That the respondent in para -8 of preliminary objection has falsely submitted that they have conducted domestic inquiry under the staff rules but in fact no inquiry has been conducted only charge sheet was given to the workman. That the reply of the workman and his appeal was not considered by the management. Hence the dismissal from service is illegal. It is most respectfully submitted that no cognizance has been taken by the competent court till date with regard to the allegations leveled by police in said case and same is pending for trial in the court of Additional Session Judge N/W Distt. Rohini Court Delhi. Thus before the decision

of the trial court, the management should not be permitted to form any opinion about the workman as for the sake of natural justice, the management should have not taken any action or impose any major penalty on him. Even their service rule applicable on the particular day doesn't permit the management to do so. It is therefore submitted that removal /dismissal of workman from services without conducting domestic enquiry and in the absence of judgment and order of the trial court, by the management is bad illegal and liable to be recalled forth with. That the case is pending for final judgment in the court of Additional Session Judge N/W district, Rohini Court, Delhi. Thus , before the decision of the trial court , the management has dismissed the workman from services for which the management should not be allowed. That the trial court in the case of Sh. Satish Jain V/s DNSBL has observed that the board resolution qua termination of the workman during the trial in the criminal case is not convincing and not as per service rules. That the termination of the workman (Satish) was stayed by the civil court. The case of Satish is still pending. A copy of the order dated 11.09.2012 passed in the case of Sh. Satish Jain Vs. DNSBL is filed and exhibited as WW-1/6

3. JUDICIAL PRONOUNCEMENTS:-

That the Hon'ble courts in various decisions has held that even if they have their service rules then also they should adhere to the principles of Natural Justice.

i) **M/s Laxmi Precision Screw Ltd. Vs. Ram Bhagat , 2002 LAB I.C. 2968 (PARAS-16)**

It is observed that the Arbitrariness in an anti-thesis to rule of law, equity , fair play and justice –contract of employment there may be but it cannot be devoid of the basic principles of the concept of Natural Justice.

Wrongful termination /reinstatement

(ii) Deepali Gundu Surwase Vs. K J A Mahavidyalaya & Ors. 2013 (11) SCALE 268

Says that certain parameter to be looked into. Because the injury suffered by a person , who is dismissed or removed or is otherwise terminated from services cannot easily be measured in terms of money with the passing of an order of termination not only the concerned employee but his entire family suffers grave adversities. The reinstatement of such an employee by a finding of the competent judicial authority /quasi judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages , gainful employment.

That the gainful employment to be proved by the employer. If the employer gets failed to prove the employer is entitled to get full back wages in case of illegal proposition.

- 1) In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule.

- 2) To be decided when issue is made while considering length of service.
- 3) If enquiry conducted is against the principal of natural justice.
- 4) Where victimization is proved against the employee.
- 5) For delay litigant should not be penalized .

That this Hon'ble court may kindly be pleased to pass the order and judgment in the above facts and circumstances.

I have heard the arguments of Ld. A/R for the workman and perused the evidence on record of workman.

It is relevant to mention here that burden to prove issue no. 1 and 2 was on management but in the instant case management neither filed written statement nor cross-examined workman and his witness. As well as management failed to adduce evidence to prove issue no. 1 and 2. In these circumstances there is no option to this Tribunal except to decide issue no. 1 and 2 against management and in favour of workman. Which are accordingly decided.

So far issue no. 3 and 4 is concerned burden to prove these issues lies on workman. Through his evidence workman tried his best to prove issue no. 3 and 4 in his favour but their Lordship of Hon'ble Supreme court on the point of reinstatement and grant of back wages has settled law. Which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013)II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000/-(Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus," grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus, Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation is liable to be awarded to the workman/claimant which shall be paid to workman/claimant within 2 months by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Reference is decided in favour of workman/ claimant and against Management.

Award is accordingly passed.

Dated:-19.8.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2130.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 28/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 प्राप्त हुआ था।

[सं. एल-12012/21/2013-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2130.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 04/11/2015.

[No. L-12012/21/2013-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY,
Presiding Officer
I.D.28/2013

Reference No.L-12012/21/2013-IR(B-I) dated: 20.5.2013

Shri Braham Dev Sargara
S/o Shri Ramuram
R/o Shivbari, Near Post Office,
Bikaner.

V/s

The Assistant General Manager
State Bank of India
Nehru Place, Tonk Road,
Jaipur.

AWARD

25.6.2015

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of State Bank of India, Zonal Office, Jaipur not to grant annual increments from 1997 to 2004 to Shri Braham Dev Sargara, Assistant, NLC, Brasinghsar Branch, Bikaner is fair, legal and justified? If not, he is entitled to what relief?”

2. Pursuant to order dated 24.6.13, notices were sent to both the parties fixing 17.10.13 for filing statement of claim. On 17.10.13 both the parties were present, applicant filed statement of claim. Copy of the claim petition was given to opposite party fixing 24.12.13 for reply. On 24.12.13 applicant was present. Opposite party sought adjournment for filing reply which was allowed fixing 24.3.14 for filing reply. On 24.3.14 none was present from both the side, 9.6.14 was fixed for filing reply to statement of claim providing last opportunity to opposite party with direction that case shall proceed ex-parte in case reply is not filed. On 9.6.14 Vakalatnama was filed by opposite party & adjournment was sought for filing reply which was granted fixing 31.7.14 for reply.

3. On 31.7.14 applicant was absent & Deputy Manager, SBI was present. Learned Counsel were on strike, hence, 16.10.14 was fixed for filing the reply. On 16.10.14 an information dated 16.10.14 addressed to tribunal was submitted by bank with reference to the present case wherein it has been mentioned that arrear of salary from April, 97 to September, 2010 amounting to Rs.2,55,539.91 has already been paid to the applicant Sh. Braham Dev Sargara & the applicant is satisfied & matter has been resolved amicably, hence, Hon'ble Tribunal is requested to close the matter. Along with above letter of information a letter dated 15.9.14 sent to AGM, State Bank of India, Regional Office, Jaipur by applicant has also been filed on record. Letter dated 15.9.14 has been sent for information & necessary action to AGM, State Bank of India, Region-4, Jaipur. Applicant Sh. Braham Dev Sargara has written in his letter dated 15.9.14 that he had applied for voluntary retirement vide his letter of request dated 8.3.14. He has further said that he had applied for voluntary retirement because bank had stopped pay increment from 1997 till 2004 but bank started giving increment from year 2005.

According to content of letter, in his entire banking career of 32 years he had not committed any mistake which occasioned any loss to the bank. He has further said that he had applied for voluntary retirement because he had four daughters who were required to be married, hence, he was under compulsion to apply for voluntary retirement so that he could get money from the bank. Further he has alleged that as payment of arrear of increment in pay from 1997 to 2004 has been made by the bank without delay, hence, money received in form of arrear will meet the requirement of marriage. He has thanked the bank for making payment & in view of receipt of arrear which has met the need of the marriage of his daughters he has decided to withdraw the application of voluntary retirement. Accordingly he has prayed the withdrawal of application of voluntary retirement dated 8.3.14.

4. Above application of the applicant filed by bank was taken on record on 16.10.14. On 16.10.14 an order was passed directing the applicant to show that why the proceeding of the case be not closed. On 16.10.14 next date 20.11.14 was fixed. On 20.11.14 learned counsel for the applicant appeared. Opposite party was absent. It was submitted by learned counsel for applicant that increment given to the applicant is not to the extent admissible to him. File was fixed for further order in afternoon on 20.11.14. In the afternoon of 20.11.14 learned counsel for applicant & Deputy Manager from the bank appeared for the parties. It was alleged by Deputy Manager that entire payment has been made & the workman is working in the branch of the bank & he is satisfied with the payment. 22.12.14 was next date fixed for filing the satisfaction of the applicant & reply to the statement of claim by the opposite party. On 22.12.14 applicant side remained absent, learned representative for opposite party appeared but reply to statement of claim or satisfaction of the applicant was not filed. 9.3.15 was next date fixed for filing reply to statement of claim by opposite party. On 22.12.14 it was reiterated by opposite party that entire payment to the applicant has been made. On 9.3.15 both the parties were absent & an order was passed to proceed ex-parte against opposite party fixing 15.4.15 for ex-parte evidence of the applicant.

5. On 15.4.15 applicant was absent. Opposite party was present. Presiding Officer was on leave. Next date 10.6.15 was fixed for ex-parte evidence of the applicant. On 10.6.15 none appeared. It was observed by the Tribunal that reply to statement of claim was not filed on the ground that applicant is already working in the bank who is satisfied with the payment made by the bank. It was further observed that on 20.11.14 it was ordered that bank should file either reply to statement of claim or satisfaction of the applicant that he is satisfied with payment made by the bank but neither letter of satisfaction nor reply to statement of claim was filed due to which ex-parte order was passed against the bank & applicant was provided opportunity to lead ex-parte evidence but it appears that

applicant is also not interested in filing ex-parte evidence, hence, last opportunity was given to applicant to file ex-parte evidence on 18.6.15.

6. After passing order on 10.6.15 learned counsel for the bank appeared with an officer of the bank at 13.50 hours & filed two documents which was taken on record & the learned counsel of the bank & bank officer both were informed that case is proceeding ex-parte against the bank. One of the two documents submitted by the bank is an application written by Branch Manager to the AGM, State Bank of India, Region-VI, Administrative Office, Jaipur, wherein it has been alleged that an application submitted by applicant Sh. Braham Dev Sargara for withdrawing the case from the Labour Court is forwarded to the AGM. Attested Photocopy of the withdrawal application attested by the officer of the bank has been attached to the application. In withdrawal application of the applicant Sh. Braham Dev Sargara addressed to Branch Manager, it has been submitted that bank has made payment in relation to eight unpaid increments admissible to him & his pay fixation from year 2010 has also been done correctly. He is thankful to the bank for the act of payment & pay fixation. The applicant has further said that on next date he will withdraw his case from tribunal & through this application he is withdrawing his case. The application of the applicant is dated 20.4.2015.

7. On 18.6.15 applicant was absent & on behalf of bank an officer of the bank Sh. S.L.Meena, Manager (HR) was present. Ex-parte evidence was not submitted by applicant. No adjournment was filed from the applicant side, hence, opportunity for the evidence of applicant was closed. It was submitted by Manager (HR) that no evidence is required to be produced on behalf of bank in absence of evidence from applicant side. Accordingly, evidence for both the parties was closed & case was fixed for argument on 24.6.14. On 24.6.14 also none was present on behalf of applicant. Sh. Shanker Lal Meena, Manager (HR) was present on behalf of opposite party who alleged that entire payment has been made to the applicant & applicant is working in the branch office of the bank & has no objection if the case is closed.

8. According to statement of claim the fact of the case is that the applicant was appointed on 4.1.84 on the post of Messenger & promoted to the post of 'Assistant' on 19.8.2010. At the time of submitting statement of claim he is working on the post of Assistant in L.N.C., Barsinghsar, Bikaner branch. It has been further alleged that since his date of appointment till 1996 he was getting regular annual increment but since 1997 suddenly without sufficient cause annual increment was stopped by the bank & remained stopped till the year 2004 which has resulted into a great injustice to the applicant which gave rise to industrial dispute. Due to stoppage of increment the applicant is receiving less amount of pay & suffers

economic loss every month. It has been further alleged that orally & in writing he made several request to get benefit of increment from 1997 to 2004 which was not considered by the employer.

9. It has been further alleged that his credit balance of leave has been made NIL by the employer & deduction has been made from his pay on account of leave availed by him despite the fact that leave was existing to his credit & yet he was given leave without pay which has occasioned injustice to him. It has been further alleged that the applicant's daughters are in marriageable age & due to stoppage of increments he has been placed in financial difficulty. It has also been alleged that unfair labour practice is being followed by the bank. Thus, the applicant has prayed that order be passed for payment of arrears of increment from 1997 to 2004 in favour of applicant with 18% interest.

10. It is clear from the record of the proceedings that after filing of statement of claim as noted above reply to the statement of claim has not been filed by opposite party bank. It is also clear that case has proceeded ex-parte against the bank on 9.3.15 & since then on the dates fixed for ex-parte evidence no evidence has been adduced from the applicant side in support of statement of claim. It is also clear that applicant Sh. Braham Dev Sargara in his application dated 20.4.15 has expressed his intention to withdraw the case stating in the application that he is withdrawing the case. As the applicant has not lead any evidence, hence, the application is liable to be dismissed for want of evidence. The application is also fit to be dismissed as withdrawn but as the application for withdrawal by the applicant has not been submitted by him to the court & he has not appeared before the court in person for withdrawing the case, hence, I am of the view that application is fit to be dismissed for want of evidence. Accordingly, the application of the applicant is dismissed for lack of evidence.

11. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का. आ. 2131.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट (संदर्भ संख्या 9/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 प्राप्त हुआ था।

[सं. एल-41012/274/2003-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2131.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 04/11/2015.

[No. L-41012/274/2003-IR(B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY,
Presiding Officer

I.D.9/2014

Reference No.L-41012/274/2003-IR(B-I) dated: 25.2.2014
Shri Raghuvir Singh Sisodia
General secretary,
Paschim Rly. Karmchari Parishad
Jai Prakash Chowk, Khanpura,
Ahmedabad (Gujarat).

V/s

1.The Chief Project Manager
Western Railway
Ahmedabad (Gujarat).
2.The Chief Project Manager
North Western Railway
Zonal Office, Jaipur.

AWARD

17.8.2015

1. The Central Government in exercise of the powers conferred under clause (d) of sub-section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या नियोजन मुख्य परियोजना प्रबंधक, उत्तर पश्चिम रेलवे जोनल कार्यालय जयपुर एवं मुख्य परियोजना प्रबंधक, पश्चिम रेलवे अहमदाबाद के कर्मकार श्री राजमनीकम पुत्र श्री रामचंद्र को जन्म तिथि दिनांक 10.03.43 मानकर मुख्य परियोजना प्रबंधक प. रेलवे जयपुर के द्वारा पत्र क्र. ई/949/1- जेपी दिनांक 19.10.2000 के तहत सेवा से पृथक करना एवं पूर्ण वेतन लाभ / भत्ते आदि का भुगतान नहीं करना उचित एवं वैध है? यदि नहीं तो कर्मकार अपने नियोजक से क्या राहत पाने का अधिकारी है?”

2. Pursuant to the receipt of the reference order, registered notices were issued to both the parties as per the order of the tribunal dated 20.3.2014 fixing 24.6.2014 for filing statement of claim. On 24.6.2014 case was called out, none was present from either side. Order was passed to issue notice to the applicant Sh. Raghubir Singh Sisodia, General Secretary, Western Railway Karamchari Parishad, Ahmedabad, (Gujarat) & opposite party No.3 & 4 fixing 5.8.2014 for filing statement of claim. On 5.8.2014 learned advocates were on strike & both the parties were absent, 22.10.2014 was next date fixed for filing statement of claim. On 22.10.2014 both the parties were absent. On perusal of record it was found that Chief Project Manager, Western Railway was unserved. Applicant was served in person. Notice sent to applicant in the name of General Secretary was also served upon him. Chief Project Manager, North Western Railway was served by refusal. Order was passed to issue notice against the unserved parties & for filing statement of claim on 26.12.2014.

3. On 26.12.2014 both the parties were absent & Presiding Officer was on leave. 23.3.2015 was fixed for filing statement of claim & for further order in the case. On 23.3.2015 both the parties were absent. Order was passed to issue notice to the Chief Project Manager, Western Railway, Ahmedabad, (Gujarat) fixing 28.4.2015 for service of notice & for filing statement of claim. On 28.4.2015 both the parties were absent. Notice sent to Chief Project Manager, Western Railway, Ahmedabad, (Gujarat) returned with endorsement that address mentioned on the notice is incomplete. Order was passed to file statement of claim on next date 28.7.2015 beside re-issuing of notice to the Chief Project Manager, Western Railway, Ahmedabad, (Gujarat).

4. On 28.7.2015 none appeared from both the side. From perusal of record of service it was found that applicant was served in person & Chief Project Manager, Western Railway, Ahmedabad, (Gujarat) was served by denial of notice. Rest of the opposite parties were also served but statement of claim was not filed by applicant till 28.7.2015. In the interest of justice case was adjourned by the tribunal on its own motion providing opportunity to the applicant for filing statement of claim fixing 14.8.2015 as next date.

5. On 14.8.2015 case was called out. Both the parties were absent. From perusal of the order-sheet of the case it appeared that applicant was served for filing statement of claim on 22.10.2014 but he did not file statement of claim till 14.8.2015. Beside applicant rest of the parties were also served but none appeared from the date of service till 14.8.2015. In above facts & circumstances looking into the neglect of the applicant in pursuing the matter further case was reserved for passing "No Claim Award". It is pertinent to note that on 25.2.2014 reference order was sent by Ministry to applicant with direction to

file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding on the issues referred to it on merit. Accordingly, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2132. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ोदा राजस्थान क्षेत्रीय ग्रामीण बैंक प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 67/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल-12011/39/2015-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2132.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2015) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the industrial dispute between the management of Baroda Rajasthan Kshetriya Gramin Bank and their workmen, received by the Central Government on 04/11/2015.

[No. L-12011/39/2015-IR(B-1)]
SUMATI SAKLANI, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी.प्रकरण सं. 67/2015

श्री भरत पाण्डेय

पीठासीन अधिकारी

रेफरेन्स नं. -L- 12011/39/2015-(IR (B-I) दिनांक 15/07/2015

The Secretary,

Grameen Bank Officers Organization & Grameen Bank
Employees Union,
B- 124, Sethi Colony,
Jaipur (Rajasthan)

v/s

The Regional Manager,
Baroda Rajasthan Kshetriya Grameen Bank,
Regional Office, Kalash Tower,
13- Lajpat Nagar, Alwar.

प्रार्थी की तरफ से : श्री पंकज त्रिपाठी
अप्रार्थी की तरफ से : श्री सुनील अग्रवाल
: पंचाट :

दिनांक 30/9/2015

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 10 की उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 30/09/2015 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है:-

“क्या प्रबंधन बड़ौदा राजस्थान क्षेत्रीय ग्रामीण बैंक, क्षेत्रीय कार्यालय अलवर के द्वारा यूनियन के सचिव श्री पंकज त्रिपाठी को दुर्भावनावाश ‘कारण बताओ नोटिस’ दिनांक 08/09/2014 दिया जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी है?”

2. रिफरेन्स के आधार पर मामला पंजीकृत कर उभयपक्ष को नोटिस निर्गत की गयी और दिनांक 28/09/2015 को नोटिस में क्लेम प्रस्तुत करने की तिथि नियत की गयी। दिनांक 28/09/2015 को उभयपक्ष उपस्थित आये परन्तु क्लेम प्रस्तुत नहीं हुआ तथा मामले को सुलह के आधार पर वापस लेने का कथन आवेदन के माध्यम से किया गया। उभयपक्ष ने मौखिक कथन प्रस्तुत किया कि वे लोक अदालत के माध्यम से मामले का निस्तारण चाहते हैं, अतः दिनांक 30/09/2015 को लोक अदालत में मामला निस्तारण हेतु नियत किया गया।

3. दिनांक 30/09/015 को लोक अदालत में सुलह के आधार पर मुकद्दमें के निस्तारण हेतु आवेदन प्रस्तुत हुई जो निम्नवत् है:-

श्रीमान प्रिसाईडिंग ऑफिसर
केन्द्रीय श्रम न्यायालय, जयपुर
विषय: केस संख्या 67/2015 वापिस लेने हेतु।
मान्यवर,

उपरोक्त विषयान्तर्गत निम्न प्रकार से निवेदन है। प्रार्थी यूनियन की ओर से प्रस्तुत औद्योगिक विवाद के सम्बंध में माननीय श्रम मंत्रालय द्वारा दिनांक 15.07.2015 को जारी सन्दर्भसंख्या L- 12011/39 /2015- IR (B-I) माननीय औद्योगिक विवाद अधिकरण के समक्ष वास्ते निस्तारण प्रेषित किया गया जिसके सम्बंध में अधिकरण द्वारा नोटिस क्र. 287 दिनांक 07.08.2015 पक्षकारों को जारी किया गया है। जिसमें आज दिनांक 30.09.2015 तारीख को नियत है।

यह भी कहा गया है कि उक्त उनवानी प्रकरण को प्रार्थी यूनियन विथड्रॉ (Withdraw) करना चाहती है, प्रार्थी यूनियन लोक अदालत की भावना से उक्त उनवानी प्रकरण विथड्रॉकर रहा है।

अतः महोदय से निवेदन है कि उक्त उनवानी प्रकरण को विथड्रॉ करवाने की कृपा करें।

दिनांक: 30.09.2015

भवदीय प्रार्थी यूनियन

हस्ताक्षर पठनीय

जरिये सचिव

ग्रामीण बैंक एमप. यूनियन

यूनिट BRKGB, अजमेर

4. पक्षकारों द्वारा प्रस्तुत सुलहनामा उपरोक्त पर लोक अदालत में निम्न आदेश पारित हुआ:-

5. आज पत्रावली लोक अदालत में प्रस्तुत हुई। श्री पंकज त्रिपाठी, याची व्यक्तिगत रूप से उपस्थित है। श्री सुनील अग्रवाल, वरिष्ठ प्रबन्धक, क्षेत्रीय कार्यालय, बड़ौदा राजस्थान क्षेत्रीय ग्रामीण बैंक, विपक्ष की तरफ से उपस्थित हैं जिन्होंने अधिकार पत्र बैंक की तरफ से प्रस्तुत किया। श्री पंकज त्रिपाठी तथा श्री सुनील अग्रवाल द्वारा सुलहनामा प्रस्तुत किया गया जिसे शामिल पत्रावली किया गया। सुलहनामा में उल्लेख है कि यूनियन इस प्रकरण को वापस लेना चाहती है तथा न्यायाधिकरण की नोटिस पर श्री पंकज त्रिपाठी, यूनियन सचिव उपस्थित आये हैं। सुलह की शर्त एवं उद्देश्य से उभय पक्ष को अवगत कराया गया एवं सुलहनामा उभयपक्ष को सुनाया तथा समझाया गया। सुलह में कोई शर्त नहीं है तथा बिना शर्त यूनियन मुकद्दमे को वापस ले रही है। अतः सुलहनामे के आधार पर इस प्रकरण को याची को वापस लेने की अनुमति प्रदान की जाती है। सुलहनामा दिनांकित 30/09/2015 पंचाट का अंश होगा।

6. न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2133.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गौतम स्टेन वर्क्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 26/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/11/2015 को प्राप्त हुआ था।

[सं. एल- 29012/88/1994-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th November, 2015

S.O. 2133.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/1995) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the

Industrial Dispute between the employers in relation to the management of M/s Goutam Stone Works and their workman, which was received by the Central Government on 03/11/2015.

[No. L-29012/88/1994-IR(M)]
NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1) DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Ref. No.26 of 1995 .

Employer in relation to the management of M/s Goutam stone works.

AND

Their workmen

Present : Sri Ranjan Kumar Saran,
Presiding Officer

Appearances :

For the Employers	: None
For the workman	: None
State	: Jharkhand.
Industry	: Stone mines.

Dated: 23/10/2015

AWARD

By Order No.L-29012/88/1994-IR (M), dated 21/02/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the management of M/s Gautam Stone Works, Sahebgunj in removing Sri Mahavir Yadav from his service and refusing to re-employ him on his job was legal and justified? If not, to what relief the concerned workman is entitled?”

2. After receipt of the reference the parties are noticed. Though they took steps for certain dates, subsequently did not appears nor take any interest in the case. It is presumed that the disputes between parties have been resolved in the meantime. Hence No Dispute Award is passed.

R.K. SARAN, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2134.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आर. के. मार्बलस लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 8/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/11/2015 को प्राप्त हुआ था।

[सं. एल-29012/27/2014-आईआर(एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th November, 2015

S.O. 2134—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2015) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s R.K. Marbles Ltd. and their workman, which was received by the Central Government on 03/11/2015.

[No. L-29012/27/2014-IR(M)]
NAVEEN KAPOOR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY,
Presiding Officer

I.D.8/2015

Reference No.L-29012/27/2014-IR(M) dated: 15.12.2014

Sh. Aman Kumar Jha
S/o Shri Ramakant Jha
R/o Rajendra Nagar,
Dheeranpatti (Bela)
P.O. – R.K.Ashram
Dist. – Mujaffarpur (Bihar) Bihar.

V/s

The General Manager
M/s R.K.Marbles Ltd.
Morwad, Dist. Rajsamand,
(Rajasthan), Rajsamand.

AWARD

30.9.2015

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of M/s R.K.Marbles Ltd., Morwad Rajsamand, in termination services of Shri Aman Kumar Jha S/o Shri Ramakant Jha w.e.f. 14.01.2014 is legal and justified? If not, what relief the workman is entitled to?”

2. After receipt of reference it was registered on 8.1.2015 & registered notices were sent to both the parties fixing 22.6.2015 for filing statement of claim. On 22.6.2015 none appeared from both the side. Next date 10.8.2015 was fixed for filing statement of claim furnishing opportunity to the claimant & adjourning the case for the day. Acknowledgement sent with registered notices were not received back.

3. On 10.8.2015 none appeared from both the side. Acknowledgement from the opposite party was received back on record but acknowledgement connected with notice of the applicant was not received back. Order was passed to issue fresh notice to the applicant fixing 29.9.2015 for filing statement of claim. On 27.8.2015 notice was sent to the applicant for filing statement of claim till 29.9.2015 in compliance of order dated 10.8.2015.

4. On 29.9.2015 none appeared from both the side. Despite the fact that twice notices were sent to applicant none appeared on his behalf & statement of claim was not filed. It is pertinent to note that after receipt of reference applicant is under obligation to file statement of claim suo moto within 15 days from the date of receipt of reference forwarding a copy of such statement of claim to each one of the opposite parties involved in this dispute. Applicant has neither opted to file statement of claim on his own motion nor on the notices sent by the Tribunal.

5. In above fact & circumstances & in absence of statement of claim it is not possible for the Tribunal to answer the reference on merit. Accordingly, “No Claim Award” is passed against the reference in question.

6. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2135.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एसोसिएटेड स्टोन इंडस्ट्रीज लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 33/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/11/2015 को प्राप्त हुआ था।

[सं. एल-29012/40/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th November, 2015

S.O. 2135.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.33/2014) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Associated Stone Industries Ltd. and their workman, which was received by the Central Government on 03/11/2015.

[No. L-29012/40/2013-IR(M)]
NAVEEN KAPOOR, Under Secy.

अनुबंध

**केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम
न्यायालय, जयपुर**

सी.जी.आई.टी. प्रकरण सं. 33/2014

भरत पाण्डेय,

पीठासीन अधिकारी

रेफरेंस नं. L-29012/40/2013-IR (M) दिनांक 17.04.2014

Shri Kalu Lal Panwar S/o. Shri Mangilal Panwar,
R/o Village & Post Laxmipura,
Tehsil- Ramganjmandi,
Distt.- Kota. (Rajasthan)

v/s

The Manager,
M/s Associated Stone Industries Ltd.,
Tehsil- Ramganjmandi,
Distt.- Kota. (Rajasthan)

प्रार्थी की तरफ से : श्री समर्थ शर्मा — एडवोकेट

अप्रार्थी की तरफ से : श्री रुपिन कुमार काला — एडवोकेट

: पंचाट :

दिनांक : 06. 08. 2015

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 10 की उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 17/04/2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-

2. ‘Whether the action of the management of M/s Associated Stone Industries Ltd., Ramganj Mandi in terminating the services of Shri Kalu Lal Panwar S/o Shri Mangilal Panwar w.e.f. 23.01.2013 is legal and justified? If not, what other relief the workman is entitled to?’

3. स्टेटमेंट आफ क्लेम में दिये गये तथ्य के अनुसार संक्षिप्ततः याची श्री कालूलाल का कथन है कि वह विपक्षी कम्पनी में हेल्पर के पद पर दिनांक 4.1.90 से नियमित श्रमिक के रूप में नियुक्त था जिसका रजि. बीट संख्या 15324 एवं प्रो.फ.टोकन नं. 55168 था तथा अप्रार्थी कम्पनी के विभिन्न पिट नम्बरों पर कार्यरत था। इस प्रकार प्रार्थी व अप्रार्थी के मध्य नियोजक एवं श्रमिक के सम्बन्ध रहे हैं। आगे यह कथन है कि विपक्षी कम्पनी द्वारा प्रार्थी को खान लक्ष्मीपुरा भाग 6 में स्थित लीज क्षेत्र में कम्पनी की टापरी निवास हेतु दी गई तथा उक्त टापरी याची द्वारा अवांछनीय तत्वों को बेच दिये जाने के कारण कम्पनी को नुकसान पहुंचाने एवं सुचारु रूप से कार्य सम्पन्न होने में बाधा उत्पन्न होने के आधार पर दिनांक 23.1.2013 को प्रार्थी की सेवा समाप्त किये जाने का अवैधानिक आदेश कम्पनी द्वारा जारी किया गया। प्रार्थी को कम्पनी से कार्य मुक्त कर जबरन एवं मनमाने तौर पर हटा दिया गया जबकि उक्त टापरी जिस भूमि पर बनी थी वह याची की स्वयं की खरीदी हुई मिलकियत थी जिसका प्रार्थी के पक्ष में नियमानुसार दिनांक 16.7.98 को पट्टा जारी हुआ था। प्रार्थी उक्त भूमि का उपयोग एवं उपभोग करने का हकदार है और उक्त भूमि से सम्बन्धित समस्त हक प्राप्त हैं। आगे प्रार्थी का यह कथन है कि विपक्ष द्वारा साशय प्रार्थी को सेवानियमों का उल्लंघन करते हुए बिना किसी उचित कारण के सेवा समाप्ति पत्र जारी कर दिया गया जो प्रार्थी के संवैधानिक अधिकार पर प्रत्यक्ष कुठाराघात के साथ ही भारतीय विधि द्वारा स्थापित सिद्धान्तों एवं प्राविधानों का उल्लंघन है तथा विधि विरुद्ध एवं नैसर्गिक सिद्धान्त की अवहेलना है। विपक्षी कम्पनी द्वारा अपनी प्रशासनिक शक्तियों का निरन्तर दुरुपयोग किया जा रहा है जबकि नियमानुसार उक्त कारण के आधार पर किसी प्रकार सेवामुक्त नहीं किया जा सकता क्योंकि प्रार्थी को यह अधिकार प्राप्त है कि वह अपनी भूमि का उपयोग करें, हस्तान्तरण करें अथवा दान करें। प्रार्थी द्वारा इस सम्बन्ध में विपक्षी से सम्पर्क भी किया गया लेकिन कोई सन्तोषप्रद जवाब नहीं दिये जाने पर उक्त भूमि को प्रार्थी द्वारा बेचना पड़ा जिसके सम्बन्ध में दस्तावेज संलग्न है।

4. आगे प्रार्थी का यह कथन है कि अप्रार्थी के नियोजन में कार्य कर बमुश्किल वह अपना व अपने परिवार का भरण पोषण कर रहा था किन्तु अप्रार्थी कम्पनी के इस मनमाने व अवैधानिक कार्यमुक्ति आदेश के कारण प्रार्थी को अकारण ही गहरा मानसिक, शारीरिक व आर्थिक कष्ट उठाना पड़ रहा है जिसकी क्षतिपूर्ति अप्रार्थी कम्पनी से प्राप्त करने का अधिकारी है। प्रार्थी द्वारा बार-बार निवेदन के पश्चात विपक्षी कम्पनी द्वारा उसे कार्य पर वापस नहीं लेने के परिणामस्वरूप प्रार्थी ने दिनांक 31.1.2013 को राष्ट्रीय मजदूर संघ (इंटक), रामगंजमण्डी के माध्यम से एक नोटिस विपक्षी कम्पनी को भेजी जिसका सन्तोषप्रद जवाब कम्पनी द्वारा नहीं दिया गया। नोटिस की प्रति याचिका के साथ संलग्न है। इसके बाद विपक्षी ने एक नोटिस अपने अधिवक्ता के माध्यम से प्रेषित की जो विपक्षी को प्राप्त हुई लेकिन विपक्षी ने प्रार्थी को सेवा में वापस पुनर्स्थापित नहीं किया और न ही बकाया धनराशि

की अदायगी की। विपक्षी का यह कृत्य “अनुचित श्रम व्यवहार” की श्रेणी में आता है।

5. याचिका के प्रस्तर 7 में प्रार्थी का कथन है कि न्यायाधिकरण को वर्तमान मामले की सुनवाई का क्षेत्राधिकार प्राप्त है क्योंकि प्रार्थी जिला कोटा का स्थाई निवासी है और उसकी नियुक्ति भी कोटा में हुई एवं विपक्षी कम्पनी का पंजीकृत कार्यालय भी कोटा में स्थित है। प्रार्थी ने याचना की है कि उसके विरुद्ध पारित कार्यमुक्ति आदेश दिनांक 23.1.2013 निरस्त कर पुनः उसे उसके पद पर पुनर्स्थापित किया जाय और वेतन एवं भत्तों की धनराशि दिलाये जाने का आदेश भी सेवा में निरन्तरता बनाये रखने के साथ दिया जाय।

6. पत्रावली दिनांक 6.8.15 को वादोत्तर/पक्षकारों के बीच समझौते के आधार पर अन्तिम निस्तारण के लिये नियत थी। उभयपक्ष द्वारा दिनांक 6.8.15 को आवेदन इस आधार पर प्रस्तुत हुई कि समझौते के आधार पर पंचाट पारित किया जाय। आवेदन के साथ पक्षकारों की तरफ से सुलह की शर्तें “समझौता पत्र” के रूप में प्रस्तुत हुई। “समझौता पत्र” निम्नवत है :-

क्रमांक

दिनांक : 03.08.2015

समझौता-पत्र

फॉर्म-“एच”

(देखिये नियम 58)

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(3) के अन्तर्गत श्री कालूलाल पंवार आत्मज श्री मांगीलाल एवं एसोसिएटेड स्टोन इण्डस्ट्रीज (कोटा) लिमिटेड, रामगंजमण्डी प्रबन्धकों के मध्य वार्ता के दौरान दिनांक 03.08.2015 को सम्पन्न समझौता:-

प्रबन्धक प्रतिनिधि :-

1. श्री आर.एस. शर्मा, सहायक महाप्रबन्धक (कार्मिक एवं प्रशासन) एसोसिएटेड स्टोन इण्डस्ट्रीज (कोटा) लि., रामगंजमण्डी जिला - कोटा (राज.)

यूनियन प्रतिनिधि :-

1. श्री कालूलाल पंवार आत्मज श्री मांगीलाल निवासी ग्राम व पोस्ट लक्ष्मीपुरा तहसील रामगंजमण्डी जिला कोटा (राज.)

विवाद का संक्षिप्त विवरण (Short recitals of the case)

श्रमिक श्री कालूलाल पंवार आत्मज श्री मांगीलाल हेल्पर खान लक्ष्मीपुरा को प्रबन्धक मैसर्स एसोसिएटेड स्टोन इण्डस्ट्रीज (कोटा) लिमिटेड द्वारा प्रार्थी द्वारा कम्पनी लीज में बनाये अस्थाई आवास को अवांछनीय तत्वों को बिना अनुमति बेच दिये जाने पर

उसे सेवाओं से दिनांक 23.1.2013 को पृथक कर दिया गया था। जिसका विवाद लगाया जो अभी केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर में विचाराधीन है। उक्त संदर्भ में दोनों पक्षों के मध्य काफी गहन विचार विमर्श हुआ तथा दोनों के मध्य निम्न शर्तों पर समझौता सम्पन्न हुआ।

समझौते की शर्तें

1. यह कि प्रार्थी श्री कालूलाल पंवार आत्मज श्री मांगीलाल का सेवा से पृथक करने का विवाद जो माननीय केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर के समक्ष लम्बित हैं उसे समाप्त करने के बदले में प्रबन्धक उसे बतौर एक्सग्रेसिया राशि रुपये 1,00,000/—(अक्षरे एक लाख रुपये) का भुगतान जर्जे चेक नं. 007724 दिनांक 17.07.2015 H.D.F.C. बैंक से कर देगे।

हस्ताक्षर पठनीय प्रार्थी

कालूलाल

हस्ताक्षर अपठनीय

आर.एस. शर्मा,

2. दोनों पक्ष सहमत हैं कि माननीय न्यायालय औद्योगिक अधिकरण एवं श्रम न्यायालय के समक्ष दोनों पक्ष उपस्थित होकर विवाद समाप्ति हेतु अलग से प्रार्थना-पत्र प्रस्तुत कर विवाद समाप्त करा लेगे।

3. यह कि इस समझौते के फलस्वरूप प्रार्थी का अब सेवा समाप्ति संबंधी कोई विवाद शेष नहीं रहा है तथा प्रार्थी पुनः नौकरी में Reinstatement के अधिकार का भी स्वतः परित्याग करता है। दोनों पक्ष सहमत हैं दोनों पक्ष इस समझौते को Fair and Reasonable मानते हैं।

4. यह कि भविष्य में इस बारे में कोई विवाद अन्य किसी प्राधिकारी/न्यायालय के समक्ष चल रहा होगा तो वह इस समझौते के फलस्वरूप समाप्त समझा जावेगा। उभय पक्ष सहमत हैं।

5. यह कि प्रार्थी का अब प्रबन्धकों से Full and Final settlement हो गया है तथा कोई बकाया शेष नहीं है प्रार्थी को पी. एफ. व ग्रेज्युटी का भुगतान अलग से देय होगा।

हस्ताक्षर प्रबन्धक प्रतिनिधि

हस्ताक्षर अपठनीय

1. आर. एस. शर्मा,
सहायक महाप्रबंधक (कार्मिक एवं प्रशासन) एसोसिएटेड स्टोन इण्डस्ट्रीज (कोटा) लि.,

हस्ताक्षर श्रमिक प्रतिनिधि

हस्ताक्षर पठनीय
कालूलाल

1. श्री कालूलाल पंवार
आत्मज श्री मांगीलाल
निवासी ग्राम व पोस्ट
लक्ष्मीपुरा तहसील

रामगंजमण्डी जिला कोटा (राज.)

गवाह : —

हस्ताक्षर पठनीय

ओमप्रकाश

रामगंजमण्डी जिला
कोटा (राज.)

Identified by

हस्ताक्षर अपठनीय

हस्ताक्षर एडवोकेट

अपठनीय

6—8—15

7. “समझौता पत्र” के आधार पर मुकदमें का निस्तारण करते हुए दिनांक 6.8.15 को निम्न आदेश पारित किये गये :—

06.8.15

पेश हुआ। श्री कालूलाल पंवार अपने विद्वान अधिवक्ता के साथ उपस्थित हैं। विपक्ष की तरफ से श्री आर.एस. शर्मा, सहायक महाप्रबंधक (कार्मिक एवं प्रशासन) अपने विद्वान प्रतिनिधि के साथ उपस्थित हैं। प्रार्थी श्री कालूलाल की पहचान उनके विद्वान अधिवक्ता श्री समर्थ शर्मा एडवोकेट तथा विपक्षी की पहचान उनके विद्वान अधिवक्ता श्री रूपिन काला, एडवोकेट ने की है। श्री रूपिन काला एडवोकेट का अधिकार पत्र पत्रावली पर रखा गया।

उभयपक्ष की तरफ से आवेदन के साथ सुलहनामा प्रस्तुत किया गया और आवेदन के माध्यम से प्रार्थना की गयी कि संलग्न सुलहनामे के आधार पर मुकदमें में एवार्ड पारित किया जाय। आवेदन पर उभयपक्ष के विद्वान अधिवक्तागण को सुना। सहमति के आधार पर आवेदन स्वीकार की जाती है।

सुलह की शर्तें उभयपक्ष को पढ़कर सुनायी एवं समझायी गयी, उभयपक्ष द्वारा सुलह की शर्तें स्वेच्छया स्वीकार की गयी।

श्री कालूलाल पंवार ने रसीद प्रस्तुत की जिसमें उन्होंने स्वीकार किया है कि इस मुकदमें की समाप्ति के बदले एक लाख रुपये का भुगतान चेक के माध्यम से प्राप्त कर लिया है। रसीद शामिल पत्रावली किया गया। अतः मुकदमा उक्त “समझौता पत्र” के आधार पर निर्णित किया जाता है। सुलहनामा (“समझौता पत्र”) दिनांकित 06.8.15 पंचाट का अंश होगा।

भरत पाण्डेय, पीठासीन अधिकारी

06.8.15

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2136.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स राजस्थान स्टेट माईन्स एण्ड मिनरल्स के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 46/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/11/2015 को प्राप्त हुआ था।

[सं. एल-29012/46/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th November, 2015

S.O. 2136.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 46/2014) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Rajasthan State Mines and Minerals and their workman, which was received by the Central Government on 03/11/2015.

[No. L-29012/46/2013-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JAIPUR**

BHARAT PANDEY,
Presiding Officer

I.D.46/2014

Reference No.L-29012/46/2013-IR(M) dated: 22.5.2014

Shri Rajkumar Soni
S/o Late Kishan Soni
R/o 13/43, Behind Pinjra Pol Gau Shala
Sanganer, Dist- Jaipur (Rajasthan).

V/s

1. Managing Director
Rajasthan State Mines and Minerals Limited,
Meera Road, Udaipur (Rajasthan).
2. Group General Manager
Phosphate Division
Rajasthan State Mines and Minerals Limited,
Jhamarkotra, Girwa,
Udaipur (Rajasthan).

AWARD

25.6.2015

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of Rajasthan State Mines and Minerals Ltd., Udaipur/ Phosphate Division, Rajasthan State Mines and Minerals Ltd, Jhamarkotra, Udaipur, in terminating the services of Sh. Rajkumar Soni S/o Late Kishan Soni w.e.f. 16.9.2010 is legal and justified? What relief the workman is entitled to?”

2. Pursuant to the receipt of the reference order, registered notices were issued to both the parties as per the order of the tribunal dated 23.6.14 fixing 11.8.14 for filing statement of claim. On 11.8.14 applicant was absent. On behalf of opposite party Sh. Dinesh Kumar Bhupesh, Manager was present. Learned counsel were on strike. Notice sent to the applicant was back on record with endorsement of the Postal Department that after repeated visit residence of the applicant was found locked. In interest of justice order was passed to issue notice again fixing 28.10.14 for filing statement of claim. On 28.10.14 none was present on call. Notice sent to the applicant was received back with endorsement that house of the applicant was found locked. Order was passed fixing 26.11.14 for statement of claim with direction that notice against the applicant be sent once more. After order learned representative on behalf of opposite party Sh. Anil Sharma, Advocate came in appearance & stated to file Vakalatnama on date fixed 26.11.14.

3. On 26.11.14 Sh. Rajkumar Soni Applicant appeared in person & ask for time to file statement of claim by 27.1.15, hence, 27.1.15 was date fixed according to the choice of the applicant for filing statement of claim. None appeared for & on behalf of the opposite party. On 27.1.15 both the parties were present but statement of claim was not filed. Next date 16.4.15 was fixed for filing statement of claim. On 16.4.15 applicant Sh. Rajkumar Soni was absent, statement of claim was not filed. Although applicant was present on record since 26.11.14 but Vakalatnama was also not filed. In the interest of justice again case was adjourned & next date was fixed on 25.6.15 for filing statement of claim providing last opportunity to the applicant. On 25.6.15 also none appeared on behalf of applicant & statement of claim was not filed. Opposite party also remained absent. Looking into the fact that since past seven months despite appearance statement of claim has not been filed from the applicant side is indicative of the fact that he is not interested in pursuing the case further, hence, opportunity for filing statement of claim was closed & case was reserved for award.

4. It is pertinent to note that on 22.5.2014 reference order was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the findings on merit in respect of issues referred to it. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

5. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2137.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, -1 चंडीगढ़ के पंचाट (संदर्भ संख्या 72/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/11/2015 को प्राप्त हुआ था।

[सं. एल-30011/52/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 4th November, 2015

S.O. 2137.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 72/2012) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 03/11/2015.

[No. L-30011/52/2012-IR(M)]
NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL- CUM LABOUR COURT-I,
CHANDIGARH.**

Case No. ID No. 72 of 2012, Reference no. L-30011/52/2012/IR(M) dated 11.1.2013

The General Secretary, Indian Oil Panipat Refinery Employees Union, Panipat Refinery, Panipat.

Union.

Versus

The Executive Director (Incharge), IOCL, Panipat Refinery, Panipat-132140.

Respondent.

Appearances

For the Workman: Shri Hari Pal Singh.

For the Management: Shri P. Murlidharan.

Award Passed on:- 28.10.2015

Government of India Ministry of Labour vide notification No. L-30011/52/2012/IR(M) dated 11.1.2013 has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of the Indian Oil Panipat Refinery Employees Union for Change of Wages of Ministerial or non-ministerial staff in percentile proportion of time spent on duty is just, fair and legal? To what relief the workmen are entitled?”

2. On receipt of the reference, notices were issued to the parties. The Union appeared and filed claim statement pleading therein that the workmen of IOCL, Panipat Refinery are working in 48 hours duty in a week are getting only 10% extra of their basic pay in comparison of the workmen who are working for 36 hours in a week. Therefore, those workmen who are working for 48 hours in a week are entitled for 1/3rd of their present basic pay extra duty hours wages instead of 10 % extra of their basic pay. It is prayed that 1/3rd amount of basic pay may be allowed to all the workmen who are working for 48 hours in a week.

3. The management filed written statement. Preliminary objection has been taken that Equal Remuneration Act, 1976 was enacted with the objective to provide for the payment of equal remuneration to men and women workers and for prevention of discrimination on the ground of sex against workmen in the matter of employment and for matter connected therewith or incidental thereto. In the Panipat refinery both the genders are placed in the same scale of pay and equal pay for equal work. The management pleaded that the present dispute alleging non compliance of the provisions of the said act is squarely not applicable in the context and the reference deserved to be dismissed on this ground alone.

4. On merits it is pleaded that two sets of workmen which refer to workmen observing 36.25 hours per week schedule and workmen observing 48 hours per week work schedule are commonly known as ministerial and non-ministerial staff respectively. Pay and pay related benefits admissible to these two sets of workmen are in accordance with the long term Settlement arrived between the recognised unions and the management of IOCL.

5. As per clause 6.5 of Long Term Settlement on pay and pay related benefits signed on 24.01.1971 special allowance at 10% of basic pay will be given to the workmen whose normal hours of work are 48 hours per week and they are being compensated for extra hours of work performed by such workmen in comparison of non-ministerial staff. This agreement is continuing. Claimant

union is also a party to the said agreement of 2010 and it was specifically agreed that the during the period of operation of this settlement, the unions shall neither raise any demand having financial burden on the Corporation other than on a item becoming due for revision under provisions of any existing MOU signed with the Unions, nor raise any fresh demand on the issues being settled through the settlement. The Union stopped to raise the present dispute in view of the settlement to which this Union was also a party which is binding on the union also and the demand of the union for change of wages of ministerial or non-ministerial staff in percentile proportion of time spent on duty is not justified. It is prayed by the management that the demand raised by the Union is wholly unwarranted, unjustified, misconceived, misplaced, ill advised and untenable in law and deserves to be rejected. The management also filed documents along with the written statement.

6. The Union also filed rejoinder to the written statement stating therein that the Union has not concealed any fact and also denied the contents of the written statement and prayed that the demand may be decided in favour of the Union.

7. Both the parties prefer not to lead any evidence and filed written arguments on the same line of their respective pleadings.

8. I have gone through the entire record of the case and also gone through the written arguments and documents filed by the parties on record.

9. From the record it is revealed that the management has specifically pleaded that as per clause 6.5 of the Long Term Settlement signed on 24.01.1971, special allowance at 10% of basic pay will be given to workmen whose normal hours of work are 48 hours. In this context the management referred para 6.5 of the settlement dated 24.1.1971 which provides as under:-

“6.5. Special Allowance: Special Allowance at 10 per cent of basic pay will be given to workmen, whose normal hours of work are 48 hours per week. This allowance shall count for computation of Provident Fund and ‘Overtime’, but shall not be taken into account for any other purpose.”

10. The above settlement was continuing and in the year 2010 a settlement arrived at under Section 12(3) of the I.D.Act 1947 before the Regional Labour Commissioner (Central), Chandigarh and conciliation officer on 8.12.2010 in the Industrial Dispute between the management of Indian Oil Corporation Limited, Refineries Division, Panipat Refinery and their workmen represented by their recognised union, Indian Oil Panipat Refinery Employees Union (copy of settlement has been filed on record by the management). Clause 20.0 of the above settlement provides as under:

“20.0 Implementation/Interpretation of Settlement:

The Union agrees that during the period of operation of this Settlement, they shall neither raise any demand having financial burden on the Corporation, other than on an item becoming due for revision under provisions of any existing MOU signed with the Union, nor raise any fresh demand on the issues being settled through this settlement, provided that this clause shall not affect the rights and obligations of the parties in regard to matters covered under Section 9 A of the Industrial Disputes Act, 1947.”

11. It is not denied by the Union that this Union was not the party to the settlement entered into between the management and the Union on 8.12.2010 referred above. The above settlement is binding on the parties to the settlement which was arrived at before the Regional Labour Commissioner (Central), Chandigarh on 8.12.2010 in the Industrial Disputes between the management and the Union. There is also no occasion for violation of the provision Section 9A of the I.D.Act 1947 as there is no change in the service conditions of the workmen.

12. In view of the discussions made above, as the Long Term settlement entered into in the year 1971 was continuing and memorandum of Settlement also entered into between the management and the Union on 8.12.2010 in which it is specifically agreed under clause 20.0 that during the period of operation of this Settlement, they shall neither raise any demand having financial burden on the Corporation, other than on an item becoming due for revision under provisions of any existing MOU signed with the Union, nor raise any fresh demand on the issues being settled through this settlement, provided that this clause shall not affect the rights and obligations of the parties in regard to matters covered under Section 9A of the Industrial Disputes Act, 1947. The above settlement is binding on the parties to the settlement and the Union can not raise fresh demand as per the provisions of settlement dated 8.12.2010 mentioned above.

13. In view of the above it is held that the demand of the Union for change of wages of Ministerial or non - ministerial staff in percentile proportion of time spent on duty is not just which is unfair and illegal and the workmen are not entitled to any relief.

14. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

28.10.2015

S.P. SINGH, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2138.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 104/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल-22011/23/2011-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2138.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 104/2011) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India Limited and their workman, received by the Central Government on 04/11/2015.

[No. L-22011/23/2011-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM- LABOUR COURT, JABALPUR

NO. CGIT/LC/R/104/2011

Shir Bhola Ram Dhankar,
S/o Shri Sewa Ram Dhankar,
Vill & Post Singhaula,
Tehsil Rajandgaon,
Rajnandgaon (Chhattisgarh)

...Workman

Versus

General Manager,
Food Corporation of India Ltd.,
Regional Officer, Kapa, Raipur

...Management

AWARD

Passed on this 7th day of September 2015

1. As per letter dated 13-10-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22011/23/2011-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Food Corporation of India, Rajnandgaon (CG) in not providing the employment on compassionate ground to Shri Bhola Ram Dhankar S/o Ex-employee Shri Sewa Ram Dhankar who sought voluntary retirement on medical ground is justified and legal? To what relief Shri Bhola Ram Dhankar is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party claiming to be dependent son of Shri Sevaram filed statement of claim. Case of Ist party is his father Sevaram retired on medical ground. On his retirement, he submitted application for compassionate appointment on 7-11-03. Said application was submitted to the representative Union operating in FCI. After lapse of about 8 years, the application was rejected by 2nd party as per order dated 6-5-2011 quoting ground that time period of 3 years fixed for appointment has expired. The Ist party explained that the delay in considering his application was on cause of 2nd party. During the period there were no vacancies for appointment all over the region. The Ist party explained that it is incorrect. Vacancies existed in Rajnandgaon Division in November 2002 as per the statement prepared by 2nd party. Relaxation in upper age 30 years to be sought by higher authorities. Ist party on the date of application for compassionate appointment, his age was less than 30 years. From 2009 any compassionate appointment was not vague. Ist party explained that it is incorrect. When vacancies existed at FCI Rajnandgaon depot, Ist party submits that his application for compassionate appointment was rejected on the ground. There is no scope that Ist party had abused the rule of compassionate appointment. On 7-11-03, family of Sevaram consisted of his wife, 2 sons, 2 minor children and one daughter in law were dependent on his earning. Due to loss of income, the family suffered economical disturbance after retirement of Sevaram. On such ground, Ist party workman prays for appointment on compassionate ground.

3. 2nd party management filed Written statement opposing claim of Ist party. FCI Act 1964. Shri Sevaram was initially employed in FCI in 1991 has handling labour in Gang No.6 Rajnandgaon depot. For his illhealth, he was unable to perform duty of handling labour. He sought voluntary retirement on medical ground. His request for VRS was allowed on 5-8-03. 8 other employees were also permitted VRS on medical ground on 12-8-03 modified on 9-9-03 changing effective date of birth as 29-6-75. Application was submitted along with format and affidavit of evidence of employee Sevaram for giving compassionate appointment in place of his father. It is reiterated that 8 other employees had also taken VRS. The

applications for compassionate appointment by their dependent were also submitted in prescribed form. After receiving application of workman and on all the applications were scrutinized and forwarded to Regional Office, Raipur vide letter dated 3-1-04. The applications were returned by Regional Office, Raipur with request to constitute a committee at District level to verify authenticity and validity of supporting documents such as date of birth, medical certificate of applicant seeking compassionate appointment. Accordingly Committee was constituted at District level. Committee after verifying documents submitted report to the Regional Office on 26-2-04.

4. The compassionate appointment in place of employees seeking VRS on medical ground is covered by Circular dated 4-3-03 which came into force laid down only 5 % vacancy be filled by direct recruitment on compassionate ground. The circular was modified by subsequent circulars stipulating 3 years time limit for keeping the applications with a condition that after 3 years if the compassionate appointment is not possible to be offered the case will be closed. Dy. General Manager as per his correspondence dated 14-6-2011 referred various circulars including report of colleague. Committee report w.r.t. Bholaram Regional Office found that a group of 9 labours including applicant for appointment of handling labour on compassionate ground considering merit were on basis of economical existing vacancy position. The Regional Office found that Bholaram exceeded age of 30 years. There was no vacancy to the limit of 5 % per circular for appointment on compassionate ground during the period 2003 to 2011. That such compassionate appointments were given to any dependents of employee voluntary retirement.

5. 2nd party further submitted that matter pertaining to ceiling limit of 5 % giving compassionate appointment. The matter was decided with Writ Petition 7284/08 Rajpal Kumar and others versus FCI. The matter was challenged before Division Bench. It was held that 45 % ceiling limit to compassionate appointment was valid. The applicant's case was also not considered. As no vacancy under ceiling limit of 5 %, the applicant was not given compassionate ground. In substance, the claim of applicant was rejected for reasons quoted above. 2nd party submits that reference be answered in its favour.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Food Corporation of India, Rajnandgaon (CG) in not providing the employment	In Negative
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on compassionate ground to
Shri Bhola Ram Dhankar S/o
Ex-employee Shri Sewa Ram
Dhankar who sought voluntary
retirement on medical ground is
justified and legal?

(ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

7. The dispute as per term of reference pertains to denial of compassionate appointment to Shri Bholaram after VRS on compassionate ground after retirement of his father. Ist party Bholaram filed affidavit of his evidence that his father was employed as handling mazdoor. He had taken voluntary retirement on medical ground. He submitted application for compassionate appointment on 7-11-03. The application was kept pending for 8 years. As per order dated 6-5-2011, his application was rejected on ground of delay. He has stated that 4-5 persons have been given appointment in similar situation while his application was rejected. He claims entitled for appointment on compassionate ground. In his cross-examination, Ist party admits his father taken VRS on 26-8-03 on medical ground. On 7-11-03, he submitted application for appointment on compassionate ground. His date of birth was 29-6-75. That his application was rejected, he was of 31 years of age. He says that Shri Bhola Sahu, Pratap, Virendra, Anil, Kanhaiya etc. were appointed on compassionate ground. He denies that when he submitted application for compassionate ground, his age was more than 30 years. As per evidence in cross examination of workman, his date of birth is 26-6-75. He submitted application for appointment on 7-11-03. The age of Ist party comes about 28 years 5 months. He had not completed 30 years of age.

8. Management witness Amit Kumar filed affidavit of his evidence covering most of the contentions of 2nd party in Written Statement about VRS taken by father of Shri Bholaram who was employed in FCI from 1991 working in FCI, VRS on medical ground was granted to him and 8 employees. Parties have no dispute on factual matters. That as per circular dated 4-3-03, 5 % vacancies were to be allowed for appointment on compassionate ground at entry level. The affidavit of management's witness is silent why the application for compassionate appointment of workman was undecided till the year 2011 when as per the circular, compassionate appointment were to be granted within 3 years limit. Management's witness in his cross-examination he claims ignorance that FCI is registered under law. FCI has its rules about appointment on compassionate ground. He claims ignorance about the rules framed by Government of India in matter of appointment on compassionate ground.

9. Documents Annexure M-1 to M-4 proved from evidence of management's witness. As per Exhibit M-1, the information about 9 employees taking VRS on medical ground was informed to District Manager. M-2 is office order dated 8-8-03 allowing VRS to 9 employees including Sevaram F/o Ist party. Circular Exhibit M-1 dated 4-3-03 is circular issued by FCI in the matter of compassionate appointment of dependents. 5 % ceiling on the vacancies for appointment on compassionate ground at entry level. Exhibit M-2 is circular dated 4-3-03 on the same point. Exhibit M-3 is circular dated 5-2-04 enclosing the copy of consolidated scheme for appointment on compassionate ground. The scheme enclosed with it is not produced Exhibit M-4 is circular dated 5-5-2000 also refers to the ceiling of 5 % recruitment quota for appointment on compassionate ground maximum time 3 years. The evidence of management's witness has not proved rest of the documents what was the vacancy position after VRS allowed to those 9 persons. Atleast after accepting VRS on medical ground to 9 employees, their posts had fell vacant, why the application for Ist party was not decided atleast within 3 years, no reason has come on record. All the 9 applications submitted by dependents of employees taking VRS were not considered individually on merits. The applicant were referred to Regional office and after letter received by Regional office Committee was constituted. The evidence on record shows that the management has not taken proper steps to decide each of the application on it considering the vacancies as per circulars. Therefore the rejection of application for compassionate ground by 2nd party cannot be said proper and legal is ground on which application is rejected Ist party has become overage. The evidence on record shows that application was submitted by Ist party, his age was about 38 years 5 months, it cannot be a ground for rejecting appointment for compassionate ground. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- Ist party is claiming employment on compassionate ground after his father had taken VRs on medical ground. His application was not properly considered by 2nd party. The application was rejected after almost 8 years. The application was required to be decided within 3 years as per the circular. The reasons for rejection of application was not for justified reason. Ist party cannot be blamed for delay in taking decision by 2nd party. How the vacancies were considered by 2nd party, evidence is not cogent therefore in view of evidence on record as claim of Ist party of compassionate ground was rejected, for reasons he could not be blamed. Claim of Ist party for appointment on compassionate ground deserves to be allowed. Accordingly I record my finding in Point No.1.

11. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2nd party is directed to provide appointment on compassionate ground to Ist party within 30 days from the date of publication of award. No order as to costs.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का. आ. 2139.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 142/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल-22012/64/2002-आईआर (सीएम-II)]
राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 142/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd. and their workmen, received by the Central Government on 04/11/2015

[No. L-22012/64/2002- IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/142/2002

General Secretary,
RKKMS(INTUC),
Pathakhera Area,
Distt. Betul

...Workman/Union

Versus

Chief General Manager,
WCL, PO Pathakhera,
Distt. Betul

...Management

AWARD

Passed on this 7th day of September, 2015

1. As per letter dated 8-10-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-22012/64/2002-IR(CM-II). The dispute under reference relates to:

“Whether the demand of the Rashtriya Koyla Khadan Mazdoor Sangh from the management of WCL, Pathakhera for restoration of original grade and pay with continuity of service of Shri Suresh Puri workman is just and fair? If so to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 3/1 to 3/3. Case of workman is that he was initially employed at Satpura No.2 Mine Pathakhera Area on 23-8-84. He was promoted to the post of SDL Helper on 13-9-92. He was honestly doing his work to the satisfaction of his superior. On 14-9-92, false and fabricated criminal case was registered against him. He was sent to judicial custody in jail. He was looking to the financial needs of his mother Jeenabai. His mother informed management about he was in the jail. The payment of bonus and LTC was released in favour of his mother Jeenabai. His services were terminated behind his back without following due process. Charge sheet was issued to him on his address.

3. Workman submitted on 21-11-96, he was acquitted by Hon'ble High Court of MP. After his acquittal, workman submitted application dated 3-12-96 and requested to permit him to join duty. On his application, management allowed him to join duty but not on original post. He was permitted to join as General Mazdoor Category I as fresh appointment. Workman submits it amount to punishment in absence of any proved misconduct. Workman had raised dispute through Union submitting representations. The management submitted false statement. Looking to the rigid view adopted by management, the authorities submitted failure report that dispute has been referred. workman submits that the management refused his legitimate demand due to Union activities. On such ground workman prays that his original status with continuity of service and backwages be allowed.

4. 2nd party filed Written Statement at page 6/1 to 6/6 opposing claim to the workman. 2nd party submits that on 23-8-84, workman was appointed as piece rated workman Category I, T.No. 1353 in Satpura Mine No.1 of WCL. Workman was regularised as General Mazdoor Category I from 1-1-1986. On 1-1-1989, workman was promoted to the post of cableman Cat-III. Workman was habitual absentee. He remained absent without permission or sanctioned leave. His working days are shown 216.5 in 1990, 190 in 1991, 160 days in 1992. Workman remained

absent unauthorisely from 15-9-92 to 23-3-93. Charge sheet was issued to workman under clause 17.1(b), of the standing orders. As no reply was received from workman, Shri S.K.Bismillah Khan was appointed as Enquiry Officer, O.P.Yadav was appointed as management representative. Enquiry was conducted. Notices were sent on address of workman. Workman failed to appear. After notice was published in Navbharat, enquiry was conducted ex parte. As per finding of Enquiry Officer, charges were proved. Considering proved charges of workman, the services of workman were terminated.

5. After his acquittal in criminal case, workman submitted application along with copies of the judgments. The matter was referred to WCL, Hqr, Nagpur. The Competent authority approved temporary fresh appointment for period of 3 months. Accordingly workman was given appointment. It is submitted that workman had not informed his detention in jail to the management. After enquiry, the unauthorised absence, habitual absence of workman was proved. It is further submitted that on recommendation of DPC, workman along with others working in mine were promoted on 1-7-00. All adverse contentions of workman are denied. Workman was given fresh appointment as General Mazdoor. His services on post of SDL Helper had come to end as per the order of punishment. Workman has accepted punishment accepting fresh offer of appointment as General mazdoor. Workman is not entitled to any relief.

6. As per order dated 22-11-2012, enquiry conducted against workman is found legal. Management was permitted to prove misconduct by evidence.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether management of 2 nd party proves misconduct of habitual absence against workman?	In Negative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to”	As per final order.

REASONS

8. As treated above, enquiry conducted against workman is found illegal by my predecessor vide order dated 22-11-2012. Management of 2nd party was permitted to prove misconduct by evidence. Management filed affidavit of evidence of witness Shri R.D.Tuddu supporting contentions of management in Written Statement. However management's witness did not appear for his cross-examination. Therefore evidence of management's

witness cannot be considered. Any other evidence is not adduced by management. Management has failed to prove alleged misconduct of unauthorised absence against workman therefore the punishment of dismissal against workman cannot be sustained. The order of punishment of dismissal is illegal. For above reasons, I record my finding in Point No.1,2 in Negative.

9. Pont No.3- workman was dismissed from service as per order dated 14-3-95 for alleged misconduct of unauthorised absence. The charge of unauthorised absence against workman is not proved. After acquittal of workman on his representation, workman was appointed as General Mazdoor Category I as fresh appointment. That charge against workman is not proved. The order of dismissal of workman is illegal. Relief prayed by workman deserves to be allowed. Accordingly I record my finding in Point No. 3.

10. In the result, award is passed as under:-

- (1) The demand of the Rashtriya Koyla Khadan Mazdoor Sangh from the management of WCL, Pathakhera for restoration of original grade and pay with continuity of service of Shri Suresh Puri, workman is proper and legal.
- (2) The termination of service of workman from 14-3-95 is quashed. 2nd party is directed to reinstate workman with continuity of service without backwages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2140.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 75/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल-22012/417/1990-आई आर (सी. II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2140.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.75/91) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited, and their workmen, received by the Central Government on 04/11/2015.

[No. L-22012/417/1990 - IR(C-II)]
RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/75/91

General Secretary,
M.P.Koyla Mazdoor Sabha (HMS),
Post Dhanpuri,
Distt. ShahdolWorkman/Union

Versus

Sub Area Manager,
Chachai and Rungta Group,
Post Amlai Colliery,
Distt. ShahdolManagement

AWARD

Passed on this 5th day of October, 2015

1. As per letter dated 15-4-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/417/90-IR(Coal-II). The dispute under reference relates to:

“Whether the action of the management of Rungta Colliery of Sohagpur Area of SECL, PO Dhanpuri in refusing to rectify date of birth of the workman and consequently superannuating their workman Shri Jagannath S/o Nathai, Mining Sirdar w.e.f. 1-7-1987 is legal and justified? If not, to what relief the workman is entitled and from what date?”

2. After receiving reference, notices were issued to the parties. Ist party Union General Secretary of Union submitted statement of claim on behalf of workman Shri Jagannath, S/o Shri Nathai at Page 6/1 to 6/7. Case of Ist party Union is it is registered Union affiliated to Hind Mazdoor Sabha bearing application No. 45 which is also recognized Union. 2nd party is Government company subsidiary of coal India Ltd. on 28-11-85. The companies having number of areas and Rungta Colliery is a unit of Sohagpur Area, Distt. Shahdol. That workman Jagannath was working at S.C. Rungta Colliery of Sohagpur area of SECL. He was appointed in 1956. Shri Jagannath S.O Nathai appeared for Gas Testing Certificate Examination at Burhar Colliery on 5th September 1975 and granted on 4-3-76. The examination was a statutory examination and

all the particulars and information regarding address, date of birth etc are mentioned in the above mentioned certificate. The date of birth of workman is shown 18-5-35. Workman Jagannath also appeared for Examination of Sirdar Certificate under Coal Mine Regulations 1957 on 14-5-76 at Shahdol. The certificate was granted to workman on 14-4-77. His date of birth is shown 18-5-35. As per procedure, the Manager of Colliery concerned has to send the certified date of birth to the office of Director of Mines Safety on the basis of authentic records and proof of date of birth of the employee. Then the workman can appear in the above examination. The date of birth so certified by the Manager used to be mentioned in the column of date of birth of Gas Testing Certificate and Sirdar's Certificate issued by the Director of Mines Safety.

3. The 1st party further submits Office of the Director of Mines Safety being satisfied with the authentic records regarding the age and proof of date of birth of concerned employee at the time of issuing the Certificate of Gas Testing Certificate, Sirdar Certificate. As per both the certificates, date of birth of workman is shown 18-5-1935. The workman came to know that management wants to retire him on 1-7-87. He approached management requesting to correct his age as per the date of birth mentioned in the statutory certificates. Even after request and applications, the management had not paid any heed to his applications. Workman approached ALC Shahdol raising dispute through Union MP Koyla Mazdoor Sabha. Written Statement was submitted by management of chachai and Rungta group on 20-1-87 stating that the date of birth mentioned in the statutory certificate cannot be taken as authentic. After several hearings of the above dispute, it ended in failure and failure report submitted to the appropriate Government and present dispute has referred.

4. 1st party Union further submits that the management forcibly retired workman on 1-7-87. After his retirement, Union approached the management that the retirement of workman is illegal. As date of birth is shown 18-5-35 in both statutory certificates as per I.I.No.76 issued by JBCCI of Coal Industry, the date of birth mentioned in above certificate is authentic. Management further send the case for Apex Medical Board on 25-4-89. The Apex Medical Board without applying the procedure for age determination as mentioned in II No.76, determined the age arbitrarily and approved the same done by their counter part. That workman produced 4th class school leaving certificate on affidavit. The certificate issued by Medical Officer regarding his date of birth. On such ground, Union submits that retirement of workman is in colourable exercise of power. Management forced workman to retire and deprive him of work without reason ignoring the process of law. That management be asked to produce proceeding of the process for age determination by Apex Medical

Board of SECL which is in possession of management. Union prays that superannuating workman Jagannath Mining Sirdar from 1-7-87 is not legal and justified. workman is entitled to be treated in employment till date of his retirement as per his date of birth 18-5-85 shown in statutory record. Union also prays for backwages for forced idleness.

5. 2nd party filed Written Statement at Page 7/1 to 7/4 opposing claim of Union. 2nd party submits that reference is illegal beyond jurisdiction of the appropriate Government. While making reference, appropriate Government amended its jurisdiction had tried to adjudicate upon dispute between parties. The reference is about management refusing to rectify date of birth. Said finding could be given only by Tribunal on basis of evidence with it is produced by parties. Therefore the reference is liable to be rejected. 2nd party further submits that workman Jagannath was working as Mining Sirdar, duties of mining Sirdar are of supervisory nature. Wages of Mining Sirdar are more than Rs.1600/- is not covered as workman under Section 2(s) of ID Act. 2nd party further submits that workman was appointed as General mazdoor in 1956. As per coal mines regulations, the person employed in coal mine is required to give detailed particulars regarding himself which includes his name, fathers name, date of birth, address etc. These particulars are entered in a Register known as Form B Register or the Register of employment. It is statutory register. The entries in the register are made on the basis of information given by workman concerned. The entries in the register are made on the basis of information given by workman concerned. The entries are made and the workman concerned countersigned the entries made. In Form B register, the age of workman was shown 30 years in 1947 therefore he was superannuated from 1-7-87. The particulars in Form B register are binding on the workman because the particulars made thereunder are covered on the basis of information given by him and countersigned by the workman. he stopped from challenging it.

6. 2nd party submits as per NCWA-II, II No.37 was in force. According to this, date of birth and other particulars of each and every employees are displayed on he notice board in December 1981. It was also circulated. In said list, name of shri Jagannath appears at Sl. No. 198 and it was clearly mentioned that his age is 52 years as on 1-1-1979. In said notice, the employee aggrieved by the date of birth should submit objection within 90 days. In spite of displaying the particulars of age of Shri Jagannath in notice board, he did not submit any objection. It shows that he was not aggrieved by the date of his birth maintained by the management. in all those register, his age is mentioned correctly. The entries made in Form B register are countersigned by Shri Jagannath every year. There is no variation in date of birth mentioned in the register.

There were discrepancies in the record maintained by the management. That workman Shri Jagannath was examined by Apex Medical Board on 29-4-89 at SECL, Bilaspur. After going through various Form B register maintained by management, said board came to conclusion that date of birth of Jagannath was correctly entered and held that his date of birth was 1-7-87 as per the entries. 2nd party reiterates that Shri Jagannath was superannuated on 1-7-87 is legal. No ground is made out for rectifying his date of birth recorded in management record. His school leaving certificate submitted by workman is not genuine. The certificate was submitted only at the time of retirement. Workman kept quite all the years cannot challenge his date of birth recorded in management record. On such ground, 2nd party prays for rejection of claim.

7. Workman submitted rejoinder at Page 9/1 to 9/2 reiterating his contentions in statement of claim.

8. Management filed rejoinder at Page 10/1 to 10/3 reiterating his contentions in Written Statement.

9. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether action of the management of Rungta Colliery of Sohagpur Area of SECL, PO Dhanpuri in refusing to rectify date of birth of the workman and consequently superannuating their workman Shri Jagannath S/o Nathai, Mining Sirdar w.e.f. 1-7-1987 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

10. Present dispute is raised by Union on behalf of workman pertaining to date of birth. As per order sheet dated 16-4-99, it is recorded that Union did not want to lead evidence. Matter was fixed for evidence of management.

11. Management's witness I.L. Rakashiya in his affidavit of evidence says that he was working at Rungta colliery from 1-11-64 as clerk. He was promoted to the office of O.S. while working at Rungta colliery, he used to maintain Form B register of employees working in Rungta colliery. That workman Jagannath S/o Nathai were appointed as General Mazdoor in 1956. As per coal mine regulation, every person who is employed in coal mine is required to give detailed particulars regarding himself which includes his name, father's name, date of birth etc. Those particulars are entered in Register of employment,

Form B register which is statutory register. The entries in the register are made on the basis of information given by workman. The entries are made and workman concerned countersigned it. In his affidavit, he further says that in Form B register of 1979 at Sl.No. 234, name of workman Shri Jagannath is entered, age is shown 52 years. The date of commencement of employment is shown 1956. The above witness in his cross-examination says his appointment is subsequent to the appointment of workman. Part of Form B register were prepared by him and other part were prepared by his predecessor. He prepared form B register from the year 1979 and initialed. In Form B register at Sl. No. 234, appears signature of workman. It contains my initial at the bottom of sheet as Head time keeper. It does not contains signature of Manager but it contains the signature of Mines Safety Officer Shri Mansingh. The duty of time keeper is to issue attendance of workman and mark in and out of the workman for going and coming out of the mines. The Form B register contains the particulars of attendance of the workman. in form B Register of 1957, thumb impression of workman Jagannath appears. The same evidence is given about form B Register for 1959, 1960, 1962, 1973, 1964, 1968, 1976, the witness says that certificate issued by DGMS regarding Gas Testing and Sirdar Test, thumb impression of workman Shri Jagannath.

12. Management's witness No. 2 Umakant Gupta in his affidavit of evidence says as workman was appointed as General Mazdoor in 1956. As per Mine Rules 1955 under Mines Act 1952, the detailed particulars of employees were recorded including name, address, age. In Form B Register of 1957, age of Jagannath was shown 30 years. Workman was superannuated on 1-7-87. As per I.I.No.37, the date of birth and other particulars were displayed in notice board in December 1981. It was circulated. In the list, name of workman was appearing at Sl. No. 198. His age was recorded 52 years as on 1-1-79. Objections were called within 90 days. No objection was submitted by workman. the age of workman as correctly recorded in Form B Register. His case was referred to Apex Medical Board. The Board held his date of birth is 1-7-27. The school certificate of Class IV, affidavit etc. are not authentic and cannot be considered as proof of date of birth of employee. If workman objection, he should have submitted when the particulars are displayed in notice board. Copies of Form B produced are marked ExhibitM-4. As evidence of above witness remained unchallenged, witness was not cross-examined.

13. Management' witness shri M.K.Thapar is similar to the evidence of both witnesses. That workman Jagannath was appointed as General Mazdoor in 1956. Entries in Form B register were entered on information given by workman. the age of workman in 1957 was 30 years. He was superannuated on 1-7-87. The certificate regarding date of birth/ age issued by management as per entries made in Form B Register. He issued certificate dated

19-3-76 certifying that as per form B register, date of birth of Jagannath was 49 years. In his cross-examination, above witness says he was working in Rungta colliery from 1974 to 1977 workman was working as Mining Sirdar. He did not recollect whether workman had appeared Gas Testing Certificate and Mining Sirdar Certificate during his period. For Mining Sirdar Certificate, Gas Testing Certificate is necessary. Mining Sirdar Certificate and Gas Testing Certificate are issued by Director General, Safety and Mines. Witness says that zerox copy of Gas Testing Certificate/ Mining Sirdar certificate appears correctly issued. He denies that application for appearing for Gas Testing Certificate exam, Mining Sirdar are forwarded by the Manager. Further shows that age shown in Gas Testing and Mining Sirdar are not accepted. There is no basis for recording age in Form B register. The employees produced documents for 1-2 years is allowed for raising the dispute. The employees recording age in Form B Register is not given training. He claims ignorance whether before recording age, employees examined by Medical officer/ Doctor. He was unable to tell whether the employee used to sign documents or is signed in Form B or not. The evidence of management's witness about particulars recorded in Form B register on information submitted by workman is not shattered. Copies of Form B register Exhibit m-4 thumb mark of workman are appearing. His age is shown in different years. The date of birth of workman is not recorded in Exhibit M-4.

14. Turning to documentary evidence by workman in Exhibit W-1,2 Gas Testing Certificate, Sirdar certificate, his date of birth s recorded 18-5-1935. My attention is pointed out by Shri Nathulal Pandey, Union Secretary that the information was received through Mine Manager was accepted as correct. Shri A.K.Shashi submits that both the documents are admitted except the date of birth. Management not produced any evidence to show that how the date of birth recorded in Exhibit w-1, w-2, age 35 is incorrect. Exhibit w-3 is application submitte by workman Jagannath requesting not to retire him from 1-7-87. Exhibit w-4 is application submitted by Union to ALC contending that date of birth of workman was shown 18-5-35 in statutory documents. The annexure to said application finds photocopy of school certificate was submitted along with Exhibit W-4. Copies of Sirdar Certificate and other applications were also submitted to ALC. Exhibit W-5 is reply submitted by management denying claim of workman reiterating that Gas Testing Certificate, Sirdar Certificate cannot be accepted as evidence of date of birth. Exhibit W-6 is copy of I.I.No.76, W-7 is letter given by Manager that Apex Medical Board found date of birth of workman was 1-7-27.

15. Management produced documents Exhibit M-1 application submitted by workman objective to his retirement. M-2 Gas Testing Certificate, his date of birth is shown 18-5-35. Exhibit M-3 is certificate issued by

Manager of Rungta colliery, age of Jagannath was 49 years on 19-3-76. Documents Exhibit W-7, W-8 are produced for Ist party. From those documents, it is clear that date of other persons were corrected. In Exhibit W-7, date of birth of Shri R.P. Tripathi 16-7-43 as per Form B was corrected to 25-2-37. Date of birth of Lalman Thakurdin is 24-1-50 as per form B was corrected to 13-9-47. Date of birth of Sonalal 18-8-54 corrected to 1-12-56. Date of birth of Amritlal 28-10-51 as per Form B was corrected to 5-4-51 considering the certificates produced by them. As per Exhibit W-8, date of birth Tilku singh 1-7-50 in Form B Register was corrected to 7-7-50. The date of birth of Shri Biswanath 31-7-47 was corrected to 9-7-39, date of birth of shri Benurkar Mandal 1-7-41 was corrected to 31-12-42 as per the mining sirdar certificate produced by workmen.

16. Workman died during pendency on 2-3-05, his LR are brought on record. they have not adduced any evidence.

17. Witness Gopal Sharan Singh was examined by Ist party. From his evidence, documents Exhibit W-7 to W-9 are proved. In his cross-examination, said witness denied that he appeared as witness at instance of Union Secretary. He further says that he did not take any action in the matter of date of birth of workman. He admits that in 1981, notice was displayed by management regarding date of birth of the employees. Notice was displayed on notice board. He claims ignorance whether workman had taken in objection about his date of birth. That I.I.37/76 were issued for resolving the dispute of date of birth.

18. Union Secretary Shri N.L.Pandey during course of argument emphasized that I.I.76 issued by JBCCI is mandatory. That the date of birth recorded in Form B register by clerk cannot be accepted to be authentic.

19. Shri Pandey pointed my attention to I.I.76 issued as per NCWA III.

Clause 12 provides- It was also agreed that age disputes pending in the case of employees superannuated on and after Ist July, 1987 will be examined in accordance with the revised procedure and all past cases will not be reopened.

Above clause was not disputed by 2nd party. Annexure I with I.I.76 is submitted for perusal. Under caption B Review determination of date of birth in respect of existing employees.

(i)(a) In the case of the existing employees Matriculation Certificate or Higher secondary Certificate issued by the recognized Universities or Board of Middle Pass Certificate issued by the Board of Education and/ or department of Public Instruction and admit cards issued by the aforesaid bodies should be treated as correct provided they were issued by the said universities/ boards/ institutions prior to the date of employment.

(b) similarly Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic.

Provided that where both documents mentioned in (i)(a) and (i)(b) above are available, the date of birth recorded in (i) (a) will be treated as authentic.

(ii) wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/ medical Board.

(c) Age Determination Committee/ Medical Board for the above will be constituted by the management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned above, the date of birth recorded in the records of the company namely form B register, CMPF records and Identity Cards will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/ Medical Board constituted by the management for determination of age.

20. During course of argument, there is serious dispute whether the date of birth of workman shown in Sirdar Certificate, Gas Testing Certificate could be accepted as authentic. Shri N.L.Pandey submits that workman was semi literate. He has not passed matriculation or any of the board examination. Therefore the date of birth recorded in Gas Testing Certificate, Sirdar certificate be treated as authentic. There was no need to refer workman to the Apex Medical Board. Apex Medical Board has not conducted test required. Only the report of the Apex Medical Board based on date of birth recorded in Form B register cannot be accepted. The document Exhibit W-7 shows remarks of Medical Board. Date of birth 1-7-27 age recorded in Form B register was accepted by Medical Board. The report of Apex Medical Board is not produced. I.I.No.76 provides medical board to decide age as per the medical jurisprudence i.e. after conducting examination of bones and ossification test etc. It is surprised to say that in absence of report of Apex Medical Board, it cannot be said that age of Ist party workman was determined by Apex Medical Board.

21. Shri N.L. Pandey in his argument submits that date of birth in Gas Testing Certificate, Sirdar Certificate Exhibit W-1, W-2 be accepted as authentic. It is emphasized that DGMS is statutory authority. the application forms for both the examination are submitted through Mine Manager. Reliance is placed by the parties on ratio held in different cases.

22. Copy of Appendix proforma for application to be submitted for Mining Sirdar Certificate is also submitted for my perusal. On the point both the parties relies on ratio held in various cases. Shri N.L.Pandey submitted judgment in-

Unreported case between A.Raja Murali versus M/s Singareni Collieries by Hon'ble Andhra Pradesh High court. His Lordship ordered the petitioner filed admission certificate issue by the Head Master of the Primary School wherein his date of birth was shown as 10-2-1950. The said document was dated 5-6-56. That petitioner had also filed SSC certificate with Roll No. 180550 dated 18-6-74 to show that he passed SSC examinations held in April 1974. His date of birth was 10-2-1950. When the employee soon after joining in service or within 5 year from date of joining service, consistently claims a particular date as his date of birth and furnishes school record may be Primary school record and when genuineness of such record not in dispute, the claim of such employee cannot be rejected without valid reasons. When an employee passed all the departmental tests showing the date of birth as claimed by him and the concerned authorities issued certificates accordingly it becomes clear that such employee consistently claimed his date of birth as contented by him. The only presumption that can be drawn is that the authorities who issued Shot Firer's Certificate on 7-8-1974 Sirdar's certificate on 3-3-76 and overman's certificate on 30-10-78 in all probabilities must have issued those certificates mentioning his date of birth only after making reasonable enquiry. Their Lordship further observed that it is to be brought to notice that each case has to be decided on its own facts and circumstances. It is clear from I.I.76 issued by JBCCI referred above that Mining Sirdarship, Winding Engine or similar other statutory certificates where the Manager had to certify the date of birth will be treated as authentic. When the genuineness of those documents are not in dispute, those certificates have to be taken into consideration. Those certificates have to be taken into consideration.

In present case, workman or management have not produced certificate of standard 4th neither any certificate about his educational qualification therefore the ratio held in the case cannot be applied to case at hand.

In case between employees in relation to Nichitpur colliery under Sijua Area of M/S BCCL versus their workmen in unreported judgment by Hon'ble High Court Jharkhand. In para 6 of the judgment, his Lordship observed the Tribunal considered evidence particularly service excerpts, School Leaving Certificate, letter written by the management dated 1-7-97 in which date of birth of the concerned workman has been shown as 1-2-1952 and answered the award in negative holding that the action of the management of M/S BCCL in not considering the date of birth of the concerned workman as 1-2-1952 and

superannuating him from service w.e.f. 1-7-97 is not justified. The action of the management in not considering date of birth of workman as 1-2-52, superannuating him w.e.f. 1-7-97 is not justified.

In present case, the any of the school leaving certificate has not come on record to support claim of workman that date of birth was 18-5-35 therefore the judgment cannot be applied to case at hand.

Reliance is placed on Bharat Coking Coal Ltd. and others versus Chhota Birsa Uranw reported in 2014-III-LLJ. Their Lordship held dispute was not raised by respondent at fag end of career but almost two decades prior to his superannuation when he first came to know of the discrepancy. The NCWA III, initiative of the Appellants clearly indicated the existence of errors in service records of which the appellants were aware and were taking steps to rectify the same. The instance of appellant that the records in the Form B register must be relied upon doesn't hold good as it is admitted by the Appellant that errors existed in the same. The respondent duly followed the procedure available and the attempt of the Appellant to deny the claim of the respondent on the basis of technicality is incorrect. The appellant failed to follow the procedure as laid down in the Implementation Instruction. In above cited case, Para 3.3 of the judgment shows respondent Mining Sirdarship and in the certificate acknowledging the same his date of birth was recorded as 6-2-1950 corresponding to the date recorded in the aforementioned School leaving Certificate. The date of birth in Form B register was recorded as 15-2-47 and in Mining Sirdar Certificate and School Leaving Certificate was recorded as 6-2-1950.

23. Shri A.K.Shashi pointed out document 14/2-application submitted by workman to DGMS. However said document has not been proved by valid evidence. It is denied by Ist party therefore said document cannot be relied for deciding the controversy. As per appendix in I.I.No.76 workman has not produced matriculation certificate or other educational certificate therefore the date of birth recorded in Mining Sirdar Certificate, Gas Testing Certificate can be treated authentic as provided under Clause B(1)(b) of the Annexure to I.I.76.

24. Shri A.K.Shashi relies on unreported judgment in W.P.No. 18 of 1999 by Hon'ble High Court, Jabalpur. His Lordship observed the age indicated in Mining Sirdar Certificate is therefore not relevant. In present case, it has not been shown that on the basis of entry in Form B register, it was necessary to take date of birth recorded by them and that for purpose of record, the matter was sent to Age Determination Committee, the claim was made for review of the age on the basis of age shown in Mining Sirdar Certificate, Gas Testing Certificate. Long after their entry in service. There was no dispute during course of argument that after workman passed Gas Testing

Certificate, Sirdar Certificate, he was appointed as Sirdar long back in 1977. The management had accepted those certificates. Workman was referred for examination by Apex Medical Board but his age was not determined as per I.I.No.76 as per the Medical rules. the report of the Apex Medical Board is also not produced on record therefore contentions of management cannot be accepted.

25. Reliance is also placed by Shri A.K.Shashi on ratio held in

Case of G.M.Bharat Coking Coal Ltd. West Bengal versus Shib Kumar Dushad and others reported in 2000(8) SCC 696. Her Lordship dealing with determination of date of birth and judicial review held that in absence of any arithmetical or typographical error apparent on the face of the record. High Court should not interfere with such decision of the employer in exercise its extraordinary jurisdiction under Article 226. Their Lordship dealing with burden of proof held where the date of birth is entered in service record is questioned before court by an employee shortly before his retirement, burden lies heavily on him to establish his stand by producing acceptable evidence of clinching nature.

The date of birth of Ist party workman 18-5-35 was recorded in Exhibit W-1, W-2. As per Para B(1)(b) of I.I.No.76, date of birth in statutory certificates is required to be accepted as authentic when no documents are covered under para B(1)(a). Therefore the ratio held in above case cannot be beneficially applied to case at hand. In present case, the dispute lies between parties is whether his date of birth recorded in form B should be treated authentic or the date of birth recorded in Sirdar Certificate should be accepted. The ratio in above case cannot be beneficially applied to case at hand.

Next reliance is placed in case of State of Haryana versus Satish kumar Mittal reported in 2011(1) MPLJ. Their Lordship held application for correction in service record within the rules. In above judgment it is not prescribed within the reasonable time.

I.I.76 was issued in 1988 providing the method I.I. No.76 covers claim of applicant as he was retired from 1-7-87. As date of birth of workman was recorded 18-5-35 in Exhibit W-1, W-2 and the workman was appointed as Sirdar. It cannot be said that claim of workman was delayed. As per I.I.No.76, date of birth recorded under clause (C) in case of employees date of birth cannot be determined in accordance with the procedure mentioned in B-1(a), B-1(b) above. The date of birth recorded in record of the company's Form B will be treated as final. As applicant's date of birth 18-5-35 is recorded in Gas Testing Certificate and Sirdar Certificate, the form B register cannot be given preference on these documents. Considering the provisions in Para B(1)(a), B(1)(b) and Para (c) of the Appendix to I.I. No. 76. Superannuation of workman from

1-7-87 is not legal. For above reasons, I record my finding in point No.1 in Negative.

26. Point No.2- In view of my finding on Point No.1 superannuation of workman from 1-7-87 is found illegal, question arises whether workman is entitled for backwages for above period. On above point, Shri N.L.Pandey relies on ratio held in

Case of T.N.Terminated Full Time Temporary LIC Employees Association versus LIC of India reported in 2015 AIR SCW 1906. Their Lordship held employees working as temporary, badly and part time employees against permanent posts doing perennial nature of work continuing them as such for number of years is unfair labour practice as defined under Section 2(ra) which is statutorily prohibited under Section 25 T of the ID Act.

Ratio held in the case has no bearing to the controversy between parties. It cannot be beneficially applied to case at hand.

27. However as the date of birth of workman as recorded in Sirdar Certificate, Gas Testing Certificate as 18-5-35. Workman was superannuated considering his date of birth in Form B register. The superannuation of workman is illegal. Workman was forcibly kept idle, the workman had died during pendency, he cannot be reinstated. Claim of workman for wages till date of his superannuation considering his date of birth 18-5-35 deserves to be allowed. Accordingly I record my finding in Point No.2.

28. In the result, award is passed as under:-

(1) The action of the management of Rungta Colliery of Sohagpur Area of SECL, PO Dhanpuri in refusing to rectify date of birth of the workman and consequently superannuating their workman Shri Jagannath S/o Nathai, Mining Sirdar w.e.f. 1-7-1987 is not proper and legal.

(2) 2nd party is directed to pay wages to the workman from 1-7-87 till the date of his superannuation 17-5-95.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2141.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 147/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल-22012/168/1995-आई आर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2141.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.147/1995) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coalfields Ltd. and their workmen, received by the Central Government on 04/11/2015.

[No.L-22012/168/1995 - IR(C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/147/95

Chief General Secretary,
M.P.K.K.M.P(HMS),
Post Junnardeo,
Distt. Chhindwara

...Workman/Union

Versus

Manager,
Sukri Colliery,
PO Junnardeo,
Distt. Chhindwara

...Management

AWARD

Passed on this 9th day of October 2015

1. As per letter dated 7-8-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/168/95-IR(C-II). The dispute under reference relates to:

“Whether the action of the management of Sukri Colliery of WCL, Kanhan Area, PO Junnardeo, Distt. Chhindwara (MP) in dismissing Shri Balram S/o Tejbali, Mech. Fitter Sukri Colliery of WCL, Kanhan Area from services w.e.f. 15-10-94 is justified? If not, to what relief the worker is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at page 3/1 to 3/2. Case of Union is that workman Balram

was its member. He served 2nd party for 35 years without any compliance. Age of workman was 56 years on 12-9-94 around 4.15 PM. Asstt. Manager ordered workman to operate data haulage. He refused to do said work because he was fitter and not haulage Khasi. That workman had operated data haulage sometime. That he did not want to operate haulage regularly. Asstt. Manager was angry and ordered to cut attendance of workman around 4.30 PM, workman returned back. Thereafter he went to Petrol pump for filling petrol in scooter of one Shri Sushil. Asstt. Manager came there and started quarrelling over the same dispute. Hard talks held at Junnardeo main road. That chargesheet was served to workman on 13-9-94. Workman replied to chargesheet on 14-9-94 denying charges against him. Reply was received by management on 16-9-94. Instead of considering reply to the chargesheet, management appointed Enquiry Committee on 13-9-94 while chargesheet was received by workman on same day. Enquiry Officer Shri S.K.Srivastava was Personnel Manager in GM Office Kanhan. Notice of enquiry was issued on 13/14-9-94. Conveying to hold enquiry on 17-9-94 at 10 AM in his office. Workman was served with notice of enquiry on 16-9-94, 5 PM, reply to chargesheet was submitted on same day but management did not give heed to reply to chargesheet. Enquiry Committee was appointed. It is further contented that on 17-9-94, workman submitted application that at short time of the notice, it was not possible to arrange co-worker Mohan from Regional workshop. He requested to postpone enquiry to some other day. Enquiry Officer taking his application did not sign on copy. Enquiry Officer said that enquiry would be held on same day and he will dismiss him. Workman rushed to the post office and reported submitted to the police, General Manager and other authorities of WCL. He applied for change of Enquiry Officer alleged Enquiry Officer was not impartial. On 24-9-94, Chief Personnel Manager, Kanhan Area issued showcause notice informing enquiry was proceeded exparte. The charges against workman were proved. Workman was called upon to submit his comments within 48 hours. 22-9-94 was holiday. Workman received letter on 23-9-94. he replied to showcause notice on 23-9-94 by post. Workman had written letter dated 1-10-94 requesting to hold enquiry but management could not hold enquiry. Letter of dismissal was issued on 15-10-94. Union submits dismissal of workman is without giving him opportunity for his defence. The Union prays for reinstatement of workman with backwages.

3. 2nd party filed Written Statement at page 6/1 to 6/5 opposing claim of workman. 2nd party raised preliminary objection that workman expired on 24-7-95. His LR's were not brought on record within 90 days. The reference is liable to be dismissed as abated. 2nd party further submits that deceased workman was working as mechanical fitter. On 12-9-94, he was in 2nd shift. Workman reported for duty in drunken condition. For safety point of view, mines as

well as co-workers Shri Narayan Charokar not allowed him on duty. Workman threatened and abused Shri Narayan Charokar. While Narayan was returning his home after duty, workman came from his back side, stopped Narayan, abused and beaten him with belt of the lamp. Shri Abdul and other rushed to the spot. All those persons rescued Narayan. On complaint made by Narayan dated 12-9-94, chargesheet was issued to workman. Reply submitted by workman was not found satisfactory. The Enquiry Officer Shri S.K.Srivastava was appointed. Shri P.C.Sahu Personal Manager was appointed as representative of management. The enquiry was fixed on 17-9-92 as per memorandum issued on 14-9-92. Workman received memorandum and did not participate in the enquiry. Workman was present in personal department. Enquiry was conducted following principles of natural justice. The 2nd sitting of enquiry was held on 18-9-94. Workman refused to receive memorandum. Statement of 10 witnesses of management were recorded. Workman was not present to cross-examine management's witnesses who were discharged. It is reiterated that the enquiry was conducted properly. Workman was allowed opportunity for his defence. For proved charges of abuses and threats given to Shri Narayan by workman, punishment of dismissal was imposed against the workman is legal. If enquiry is found vitiated, management be permitted to prove misconduct by adducing evidence.

4. As per order dated 6-4-2015, enquiry conducted against workman is found illegal. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Sukri Colliery of WCL, Kanhan Area, PO Junnardeo, Distt. Chhindwara (MP) in dismissing Shri Balram S/o Tejbali, Mech. Fitter Sukri Colliery of WCL, Kanhan Area from services w.e.f. 15-10-94 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Enquiry conducted against workman is found illegal as per order dated 6-4-2015. The counsel for 1st party submitted application dated 21-7-2015. The workman was dead. It was submitted that management may not be permitted to produce evidence to prove charges. Further enquiry about charges cannot be allowed when workman is dead. After hearing counsel for parties, case was fixed for final arguments.

6. Management was not allowed to adduce evidence to prove charges against workman. Workman was dead. As charges against workman are not proved, the order of

dismissal of workman cannot be sustained. The dismissal of workman is illegal. For above reasons, I record my finding in Point No.1 in Negative.

7. Point No.2- The learned counsel for workman Shri P. Yadav at the time of argument submits that as charges against workman are not proved, the dismissal of workman is illegal. As workman is dead, consequential benefits of backwages be allowed. The compassionate employment also be allowed. In reply to above, learned counsel for 2nd party Shri A.K. Shashi submits that the charges against workman were of workman assaulting Shri Narayan, workman had attended duty under intoxication, enquiry is found vitiated. There is no evidence that workman was or was not in employment, backwages cannot be allowed. W.r.t. the ruling of appointment on compassionate ground, it is submitted that term of reference doesnot include the claim for compassionate appointment. The Tribunal cannot decide opportunity beyond the terms of reference. As the claim for appointment on compassionate ground is also not claimed in his statement of claim, workman died on 24-7-95 long back, I donot find substance in the argument of Shri P. Yadav about appointment on compassionate ground to the dependants of said workman. Workman was terminated on 15-10-95 and he died on 24-7-95. The backwages for period 15-10-95 to 24-7-95 deserves to be allowed. In view of workman had completed long spam of service and order of his dismissal is illegal, dependants of workman be also entitled to retiral benefits. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

(1) The action of the management is not proper and legal.

(2) 2nd party is directed to pay wages to the deceased workman for the period 15-10-94 to 24-7-95 (death of workman). 2nd party is also directed to allow retiral benefits to the workman considering his death on 24-7-95.

The monetary benefits as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का. आ. 2142.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 140/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल. 22012/597/1999-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 4th November, 2015

S.O. 2142.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No..140/2000) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited, and their workmen, received by the Central Government on 04/11/2015.

[No.L-22012/597/1999 - IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/140/2000

The Secretary,
Janta Mazdoor Sangh (HMS),
Amradandi Store Complex,
PO Amlai Colliery,
Shahdol

...Workman/Union

Versus

Sub Area Manager,
Burhar Sub Area,
SECL, PO.Dhanpuri,
Distt. Shahdol (MP)

...Management

AWARD

Passed on this 14th day of September 2015

1. As per letter dated 6-21-7-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/597/99/IR(CM-II). The dispute under reference relates to:

“Whether the action of the sub Area Manager, Burhar sub Area of SECL, PO Burhar, Distt. Shahdol(MP) in dismissing the services of Shri Befaiya S/o Jethua Clipman, Dhanpuri U.G.Mine w.e.f. 20-9-97 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 7/1 to 7/4. Case of workman is he was employed as General Mazdoor by 2nd party. he was working honestly. There was no adverse remark against him. workman had submitted medical certificates for resuming duty on 27-9-96. He was not allowed to join duty.

Chargesheet was issued to him on 27-10-96 alleging unauthorized absence. Workman further submits that he denied allegation in chargesheet. Chargesheet was issued to him with ulterior motive. That due to illness like TB, workman had applied for light job. Management did not pay heed to his request. That management alleged misconduct under standing orders. Workman submits there are no certified standing orders existing. Workman had joined Janta Mazdoor Union for redressal of his grievances. Management developed malice against him without giving any opportunity to be represented to engage co-worker, enquiry was conducted. Enquiry Proceedings shows bias of Enquiry Officer against him. Enquiry was mechanically completed by Enquiry officer. That he belongs to ST. workman further submits that he was suffering from TB. He was receiving treatment from 17-3-97 to 30-3-97. He had produced sick certificate. He was allowed to join duty as per letter dated 28-8-97. It is reiterated that enquiry was not properly conducted. He was not allowed opportunity for his defence. Report of preliminary enquiry was not supplied to him. Enquiry was conducted in violation of principles of natural justice is illegal.

3. 2nd party submitted Written Statement at Page 8/1 to 8/8 opposing claim of the workman. 2nd party submits that workman was initially appointed as General Mazdoor. He was given promotion as clipman. Workman was habitual absentee. The production of coal mines is affected by absenteeism. In Para-2 of Written Statement, working days of workman are shown in 1993-184, 1994-70, 1995-136 & 10 days in Feb-96, 16 days in March 1996. That workman was granted CL from 9-4-96 to 12-4-96. After said leave, workman not reported for duty. He was absent from 13-4-96 to 25-10-96. Workman was under treatment from 15-4-96 to 6-5-96. He was declared fit to resume duty but did not report to duty from 7-5-96 to 9-5-96, workman was under treatment at Burhar from 10-5-96 to 15-7-96. He was declared fit but did not resume duty on 16-7-96 to 25-10-96. No medical certificate was produced. Chargesheet was issued to workman as per certified standing order. Enquiry was conducted. Workman did not attend Enquiry Proceeding fixed on various dates. Workman was present in enquiry on 19-2-97 alongwith his co-worker. Workman denied charges against him. the statement of management's witnesses were recorded. Statement of workman was recorded. It is reiterated that enquiry was conducted properly. As per order dated 28-9-97, workman was removed from service. Appeal preferred by workman was rejected as per order dated 26-7-99. It is reiterated that workman was habitual absentee. The charges against workman are proved from evidence in enquiry. The allegation of victimization have been denied. 2nd party prays that reference be answered in its favour.

4. As per order dated 12-12-12, enquiry conducted against workman is found not proper and legal. 2nd party was granted permission to prove misconduct.

5. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the misconduct alleged against workman is proved by 2 nd party?”	In Negative
(ii) Whether the punishment of removal imposed against workman is proper and legal?	In Negative
(ii) If so, to what relief the workman is	As per final order.”

REASONS

6. Chargesheet issued to workman is produced at Exhibit M-1 under Clause 26.24 habitual late attendance and habitual absence from duty. The working days form 1994 to 1996 are shown in the chargesheet- in 1993-84 days, 1995-136 days, 10 days in Feb, 16 days in March 96. Affidavit of evidence of management's witness Shri P.K. Srivastava has shown similar working days of workman. Workman was granted CL. He remained absent after expiry of leave. He reported to duty on 13-3-96 to 25-10-96. His affidavit is similar to contentions of 2nd party in Written Statement that workman had not reported on duty after leave period. In his cross-examination, management's witness says Ist party did not work under him. He worked under SECL. He did not know whether workman was not given memo before issuing chargesheet. He denies that workman was not given opportunity of hearing before imposing punishment. The evidence of management's witness doesnot clearly shows the period of unauthorized absence. Workman has produced documents Exhibit W-1. To W-2. Workman had donated blood in the year 1994. Workman produced sick certificate and fit certificate Exhibit W-3. Workman was declared fit for duty on 4-11-94. Sick certificates are produced at Exhibit W-4. Workman was unfit for duty from 10-8-96. Exhibit W-5 workman was found fit for duty from 24-11-94. Exhibit W-6 workman was found fit for duty. That sick certificate is produced. Evidence of management's witness doesnot show how workman was habitually absent when workman was receiving treatment, he was granted CL at different time. Therefore evidence of management witness is not sufficient to prove charges/ misconduct alleged against workman. For above reasons, I record Point No.1 in Negative.

7. Point No.2- the charges of habitual absence alleged against workman are not proved from evidence of management witness. Learned counsel for Ist party workman pointed out my attention that illness of workman was beyond his control, any document about attendance was not produced by management, workman be reinstated.

8. Learned counsel for 2nd party Shri A.K. Shashi submits that workman was irregular in his work. Medical certificates and leave record is produced. Rest of the period was unauthorized. His working days are also brought to notice. Learned counsel Shri A.K. Shashi further submits that workman was insisting for surface duty. He was absent without submitting application for leave. The intimation of his absence was not given to the management. Therefore reinstatement should not be allowed.

9. The unauthorized absence of workman is not proved from evidence of workman. It is argued that attendance of workman was irregular. Chargesheet was issued to workman about habitual absence. Said charge is not proved from evidence of management's witness. Affidavit of evidence of workman shows his age was 57 years in the year 2010. Workman has already attained age of superannuation therefore reinstatement could not be allowed. Considering charge of unauthorized absence not proved, reasonable compensation of Rs. 2 Lakh would be reasonable. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

(1) The action of the Sub Area Manager, Burhar Sub Area of SECL, PO Burhar, Distt. Shahdol(MP) in dismissing the services of Shri Befaiya S/o Jethua Clipman, Dhanpuri U.G.Mine w.e.f. 20-9-97 is not proper.

(2) 2nd party is directed to pay Rs. 2 Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2143.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कर धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इन्स्टिट्यूट ऑफ टेक्नोलॉजी, कुरुक्षेत्र के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चंडीगढ़ के पंचाट (संदर्भ सं. 77/2012 एवं 79/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/10/2015 को प्राप्त हुआ था।

[सं. एल-42012/145/2012 आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2143. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No.77/2012 & 79/2012) of the Central Government Industrial Tribunal Cum Labour Court, No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers

in relation to the management of the National Institute of Technology, Kurukshetra and their workmen, which was received by the Central Government on 03/11/2015.

[No. L-42012/145/2012-IR(DU)]

P.K.VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID No.77 of 2012, Reference No. L-42012/145/2012/IR(DU) dated 21.1.2013

Sh. Vijay Kumar son of Shri Suresh Kumar C/o Girish Rana, H.No. 635, New Colony, Mirjapur, Near Bheem Hawan, Kurukshetra, Haryana.

....Workman.

Versus

The Director, National Institute of Technology, Kurukshetra.

...Respondent

APPEARANCES

For the Workman : None.

For the Management : Shri S.S. Chokhar, Advocate.

Award Passed on: - 27.10.2015

Government of India Ministry of Labour vide notification No. L-42012/145/2012/IR(DU) dated 21.1.2013 has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Vijay Kumar son of Shri Suresh Kumar, for reinstatement and regularisation in service with the management of Director, NIT, Kurukshetra w.e.f. 06.12.2008 as Security Guard is just, fair and legal? If not, what relief the workman is entitled to?”

2. Case repeatedly called. None appeared for the workman nor any witness is present on behalf of the workman. On the last date of hearing also, no one was present on behalf of the workman. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

Chandigarh,

27.10.2015

S. P. SINGH, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2144.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) के धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इंस्टिट्यूट ऑफ टेक्नोलॉजी, कुरुक्षेत्र के प्रबंधन के संबंधित नियोजकों और उनके कर्मकार के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, चंडीगढ़ के पंचाट (संदर्भ सं. 77/2012 एवं 79/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/11/2015 को प्राप्त हुआ था।

[सं. एल-42012/147/2012-आईआर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2144.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No.77/2012 & 79/2012) of the Central Government Industrial Tribunal-Cum-Labour Court, No.1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Institute of Technology, Kurukshetra and their workmen, which was received by the Central Government on 03/11/2015.

[No.L-42012/147/2012-IR(DU)]
P.K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID No.79 of 2012, Reference No. L-42012/147/2012/IR(DU) dated 21.1.2013.

Sh. Sanjay Sharma son of Shri Vidya Prakash Sharma,
Resident of 616/6, Patel Nagar, Kurukshetra-Haryana.

....Workman

Versus

The Director, National Institute of Technology,
Kurukshetra.

...Respondent

APPEARANCES

For the Workman : None.

For the Management : Shri S.S. Chokhar, Advocate.

Award Passed on: - 27.10.2015

Government of India Ministry of Labour vide notification No.L-42012/147/2012/IR(DU) dated 21.1.2013 has referred the following dispute to this Tribunal for adjudication:

“Whether the demand of Shri Sanjay Sharma son of Shri Vidya Prakash Sharma, Ex-security guard, for

reinstatement and regularisation in service with the management of Director, NIT, Kurukshetra w.e.f. 10.4.2008 as Security Guard is just, fair and legal? If not, what relief the workman is entitled to?”

2. Case repeatedly called. None appeared for the workman nor any witness is present on behalf of the workman. On the last date of hearing also, no one was present on behalf of the workman. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

Chandigarh
27.10.2015

S. P. SINGH, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2145.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 122/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.11.2015 को प्राप्त हुआ था।

[सं. एल-12011/45/2001-आईआर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 122/2001) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 04/11/2015.

[No.L-12011/45/2001 - IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUML-ABOUR COURT, JABALPUR

No. CGIT/LC/R/122/2001

Shri General Secretary,
Association of Punjab
National Bank Employees,
37, Bhakshi Gali,
Indore

...Workman/Union

Versus

The Regional Manager,
Punjab National Bank,
Bhopal Region,
Sikharvarta Bhawan,
Press Complex,
Bhopal, Jabalpur

...Management

AWARD

Passed on this 15th day of September, 2015

1. As per letter dated 18-6-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12011/45/2001-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Regional Manager, Punjab National Bank, Bhopal in imposing the punishment of stoppage of 4 annual grade increments with cumulative effect in respect of Shri Rajeev Stephen is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/3. Case of workman is that he was working on post of clerk/ cashier at branch Ratlam. He was previously posted at Ganjbasoda branch. Management imposed punishment stopping his 4 increments with cumulative effect. Chargesheet was issued to him on 6-1-94, the applications were vague. Certain allegations were false. Workman submitted reply to chargesheet. Without considering his reply, enquiry was initiated against him. Enquiry Officer appointed by management was biased. He was leader of the Officers Union. Workman have taken objection to the appointment of Enquiry Officer. Its cognizance was not taken. Enquiry Officer conducted enquiry as per his discretion, he acted as a prosecutor rather than a judge. Workman was not given opportunity to cross examine witnesses of management. He was not given opportunity for his defence. The findings of Enquiry Officer are perverse. Enquiry Officer had not given attention towards circumstances in favour of Ist party. He had made up his mind totally. Chargesheet was issued to the Competent Authority not by Appointing Authority. The enquiry based on said chargesheet is illegal. Workman had 14 years unblemished service record. The witness was not examined on enquiry. On such ground, workman prays for setting aside order of punishment and prays for relief of his increments.

3. 2nd party filed Written Statement opposing claim of the workman. Preliminary objection is raised that no dispute under Section 2K of ID Act has been referred. The Bank has initiated disciplinary action as per bipartite settlement. Workman was given opportunity for his defence and personal hearing. Enquiry Officer submitted

his report dated 23-6-95 holding that charges against workman are proved. The Disciplinary Authority carefully gone through the charges and findings of Enquiry Officer. The punishment of stoppage of 4 annual increments with cumulative effect was imposed against workman on 15-9-95. Workman had challenged order of punishment filing appeal after 3 years and 9 months as per bipartite settlement, the limitation period for appeal is 45 days. The appeal was filed without application for condonation of delay was rejected. All adverse contentions of workman are denied. It is reiterated that the Disciplinary Authority considered facts and misbehavior committed by workman. Enquiry was conducted following principles of natural justice. Workman was allowed opportunity for his defence. Enquiry was conducted on various dates. 2nd party submits that punishment awarded against workman is commensurate with his misconduct workman had indulged. 2nd party prays for rejection of claim of workman.

4. Workman submitted rejoinder at Page 15/1 to 15/7 reiterating his contentions in statement of claim. Workman submits that management is misleading court. Presenting Officer Mr. Chauhan was changed as he was not supporting the complainant.

5. As per order dated 10-6-2013, enquiry conducted against workman is found proper and legal.

6. Considering pleadings on record and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the misconduct/ charges alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

7. Enquiry conducted against workman is found legal and proper as per order dated 10-6-2013. Whether charges/ misconduct alleged against workman are proved requires to be decided from evidence in Enquiry Proceedings. Enquiry Proceeding is produced at Page 17/8 to 17/49. Management's witness Shri S.k.Jain in his statement at Page 17/15, 17/16 says that on 21-10-93 around 1.30 PM, workman Rajeev Stephen came to Manager, abused him in indecent language and threatened to beat

him. Workman had threaten to beat him by shoes. With difficulty, he had taken away workman from Manager. Witness has narrated that the workman said Manager if he talks further, he would be beaten by shoes using the word "Saale". In Cross examination of said witness, he says that he had straight away gone to the table of Srivastava. He had talked with Srivastava about the LIC business and premium. At that time, Mr. Sunil Jain asked workman to work at his place. On that workman in anger said to beat Mr. Jain with shoes. The evidence of the witness Jain on the point of incident is not shattered in his cross-examination. Evidence of management's witness No.1 about incident is corroborated by management's witness No.2 Shri S.K.Jain. witness No.2 in his further statement says he was in the Bank for 15-20 minutes. He claims ignorance what happened prior to his reaching the Bank. He denies that he had given statement in writing vide letter dated 21-11-92 on say of some other person. Management's witness No.3 Shri C.K. Jain Manager Gangbasoda branch corroborates that on 21-10-93, while he was sitting in cabin of Shri S.K.Jain, they had talk, the workman entered the cabin. He was shouting loudly. Workman was told that the Manager was busy. They would talk afterwards. Workman insisted for immediate talks. Workman said how he is not talking that time itself he would see him and threatened to beat him by shoes. The evidence of management's witness about occurrence of the incident is not shattered in cross-examination. The scope of judicial review under Section 11-A of ID Act is settled that evidence cannot be re-appreciated as appellate authority. The findings of Enquiry officer are supported by evidence of MW-1 to MW-3. The findings of Enquiry Officer therefore cannot be said perverse. The charges are proved from evidence of management's witness 1 to 3. For above reasons, I record my finding in point No.1 in Affirmative.

8. Point No.2- In view of my findings in Point No.1, charges against workman are proved from evidence of management's witnesses, question remains whether punishment of stoppage of 4 increments of workman with cumulative effect is proper and legal. The misconduct proved against workman pertains to abusing the Manager and threatening him to beat by shoes is misconduct of serious nature.

9. Management witness Tanvi Upadhyay in her cross-examination denies that punishment imposed against workman is harsh.

10. Considering the proved misconduct against workman, punishment of withholding 4 increments with cumulative effect of workman cannot be said disproportionate or excessive. In my considered view, looking to the proved misconduct against workman, no interference is required in the order of punishment. For

above reasons, I record my finding in Point No.2 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Regional Manager, Punjab National Bank, Bhopal in imposing the punishment of stoppage of 4 annual grade increments with cumulative effect in respect of Shri Rajeev Stephen is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2146.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (66/08) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.11.2015 को प्राप्त हुआ था।

[सं. एल-12012/23/2008-आई आर (बी.-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 66/08) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 04/11/2015.

[No. L-12012/23/2008 - IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/66/08

Shri Kailash Singh
S/o Sahab Singh,
365, Paschimipuri, Sikandra,
Agra (UP)

...Workman

Versus

Zonal Manager,
Bank of India,
Zonal Office, Ujjain Zone,
18, Shanku Marg,
Ujjain

...Management

AWARD

Passed on this 15th day of September 2015

1. As per letter dated 4-6-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/23/2008- IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Zonal Manager, Bank of India, Zonal Office, Ujjain in issuing orders of dismissal from service to Shri Kailash Singh w.e.f. 27-3-2001 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 7/1 to 7/9. Case of workman is that he is workman under Section 2(s) of ID Act. He was working as cash cum account clerk at Mahidpur branch. On 4-7-2000, he was suspended alleging gross misconduct under clause 19.5(c), 19.5(e), 19.5(j) of Bipartite Settlement pertaining to disorderly or indecent behavior, drunkenness, disobedience of order of management, doing any act of gross negligence. Workman submits that chargesheet issued to him for baseless and vague charges, Enquiry officer was appointed. Enquiry conducted against him is illegal on various grounds. Preliminary issue is decided as per order dated 30-7-2013. Enquiry conducted against workman was found legal therefore the contentions of workman in detail are not enumerated. Workman further contented that findings of Enquiry Officer were served on him alongwith showcause notice. He was removed from service as per order dated 27-3-2001. Workman has narrated charges against him in para-8, 10 to 15. The substance of the charges against workman were that he had unauthorisely collected amount of Rs. 5500 from Yogesh from 17-2-2000 for crediting in loan Account. Workman issued further point to him. the amount was not deposited. Charge No.2 pertain to posting of cheque No. 681- Rs.400 in overdraft account of workman. Charge No.3 pertain to Cheque No. 682 of overdraft Account of workman Ramesh issued by workman on 2-6-00. Other charges pertain to in bundle of Rs.10 denomination, 2 notes of Rs.10 were found less. That workman misbehaved with acting Manager Mr. Meena. Workman refused to accept cash brought by

Mahidpur branch on 10-12-98. Workman was dismissed from service vide order dated 27-3-01. The order of dismissal was challenged filing appeal. His appeal was dismissed in violation of Article 311 of the constitution, para19 of bipartite settlement. Workman submits that charges are not supported by evidence. The punishment of dismissal is shockingly disproportionate. Appellate Authority not applied his mind correctly. The evidence produced by workman was not appreciated by Enquiry Officer or Disciplinary Authority. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at page 14/1 to 14/11 opposing claim of the workman. Preliminary objection is raised by 2nd party that workman filed Writ petition No. 2537/01 before MP High Court Bench Indore was dismissed on 13-12-05 observing that the delinquent officer found guilty of the charges after enquiry granting full opportunity of hearing. The Appellate Authority also confirmed the findings of Disciplinary Authority. The workman also filed Writ Appeal No. 62/06. Writ appeal was dismissed by Division Bench of High Court on 25-4-07. The dispute raised by workman under ID Act before RLC. Management opposed conciliation proceeding in view of judgment in above Writ petition and Writ appeal. 2nd party submits order of reference is illegal. The reference is not tenable. Workman had chosen forum before Hon'ble High Court. 2nd party submits that chargesheet was issued to workman for gross misconduct under Clause 19.5(C), 19.5(e), 19.5(j). Mr. Dhamle was appointed as Enquiry Officer, enquiry was conducted on various dates. Evidence of management's witnesses and Defence Witnesses was recorded. The enquiry was adjourned on different dates. The evidence of management's witnesses and defence witnesses was recorded. The enquiry was adjourned on different dates. The documents were produced. CSE examined witness Pushkar Parihar, Yogesh. Enquiry Officer submitted his findings on 6-2-01 holding that the charges against workman were proved. Workman had abused and threatened Acting Manager Mr. Meena. Considering report of Enquiry Officer, Disciplinary Authority examined report and documents. Showcause notice was issued to workman on 3-3-2001. Punishment of dismissal was imposed against workman. Appeal preferred by workman was dismissed. 2nd party denied that enquiry conducted against workman was in violation of principles of natural justice. Workman was not given enough time for engaging Defence Assistant. 2nd party prays that the reference be answered in its favour.

4. As per order dated 30-7-2013, enquiry conducted against workman is found legal. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the dispute raised by Ist party workman under reference is tenable in view of judgments in Writ petition No. 2537/2001 & Writ Appeal No. 62/06?	In Negative
(ii) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	Does not Survive
(iii) Whether the punishment of dismissal imposed against workman is proper and legal?	Does not survive
(iv) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. 2nd party raised preliminary objections that in view of judgment in writ petition No. 2537/01 and Writ appeal No. 62/06, dispute under reference raised by workman is not tenable. In his statement of claim, workman has not disclosed about Writ petition and writ appeal decided by Hon'ble High Court. Copy of judgment in Writ Petition 2537/01 is produced. Her ladyship while dismissing Writ Petition considered submissions that petitioner was working on responsible post of cashier cum account clerk and has been leveled with charges of amount not deposited making overdrafts in his own account and the serious charges of withdrawal from other accounts and also guilty of fraud and misappropriation. He is also guilty of insubordination and such acts amount to gross misconduct. He was also guilty drunken and disorderly behavior. Such acts are prejudicial to the interest of the bank and like to affect the working of the other employees and the petitioner cannot be allowed to continue in service. There is no infirmity in the order impugned and has prayed for dismissal of the petition. It was observed on perusing the Annexures, record and the rules, it is found that the contention of the counsel for the petitioner is sans merit. The delinquent officer is being found guilty of the same charges after due inquiry and after granting full opportunity of hearing, the appellate authority has also confirmed and upheld the findings of the disciplinary authority. The conduct of delinquent doesnot elicit any sympathy and hence the petition is sans merit and is dismissed.

6. In Writ appeal No. 62/06, their Lordship of Division bench while dismissing the appeal observed on charges being proved, Disciplinary Authority passed order of removal from service which was challenged by appellant before learned single judge. Learned counsel for appellant contented that the order has been passed by the Authority which was not the appointing authority or competent under rules to pass the aforesaid order of removal from service.

Their Lordship further observed that the provisions of Bank of India Officer Employees Discipline and Appeal Rules 1976 and according to the schedule Dy. Zonal Manager, Regional manager and the Chief Manager are the Disciplinary Authorities and order having been passed by one of them cannot be said to be illegal. Their Lordship observed looking to the serious nature of charges leveled against appellant and proved by respondents, they have justified in ordering the termination of service of the appellant, no case is made out for any interference. The appeal was dismissed.

7. During course of argument, learned counsel for workman Shri P.Choubey pointed out my attention to the details of charges alleged against workman and evidence of management's witnesses. Learned counsel for 2nd party Shri A.K.Shashi submits that workman had challenged his dismissal filing Writ petition and the judgment of Single Bench was challenged filing writ appeal. Preliminary objection is raised in the Written Statement. Workman availed remedy under Article 226. The evidence and order were considered in Writ Appeal also. The objection was also raised before RLC filing reply Exhibit M-18. The reference is barred by resjudicata.

8. Learned counsel for workman Shri P.Choubey. In written notes of argument, he submitted that power of Labour Court under Section 11-A of ID Act to interfere on the question of proportionality of punishment is peculiar to the scheme of the Act and may not be exercisable by the High Court. Reliance is placed on ratio held in 1995-I-LLJ-351. It is submitted that principles of resjudicata are not applicable as the judgment of High Court is not on merit. The question of resjudicata is not involved in present reference.

Commentary in AIR Manual Vol IV 5th Edicion of Section 11 CPC note at Page 447. Essentials of resjudicata are explained. It is essential that the former judgment must be of Court Competent jurisdiction but when a plea of resjudicata is founded on general principles it is not necessary that the Court which is competent to decide the former case and decides that case should have jurisdiction to hear the later suit, refers to AIR-1961-SC-1457. It further deals with prior decision of High Court under Article 226 will operate as bar to application to Supreme court under Article 32. Under Caption (6), the legal position is explained that for application of the principle of resjudicata, the form of the proceeding whether it originated as a suit or even as an original petition is not really very material but only substance thereof.

9. Workman challenged order of his dismissal before Hon'ble High court under Article 226 and Writ Appeal, it cannot be said that Hon'ble High Court were not competent to decide legality of the order of dismissal. Workman had chosen remedy under Article 226 and also filing Writ Appeal was filed on rejection of Writ Petition. The order of dismissal was challenged by workman.

Considering the commentary discussed above, the reference is not tenable. Claim of workman is barred under Section 11 of CPC. After rejection of writ appeal, workman cannot again challenge order of his dismissal under Section 11-A raising the dispute under ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No. 2, 3- In view of my finding on Point No.1 as reference is barred by principles of resjudicata, both Point No.2,3 have become redundant. Accordingly I record my finding in Point No.2,3.

11. In the result, award is passed as under:-

- (1) The dispute under reference is not tenable as barred by resjudicata.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2147.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (158/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 04.11.2015 को प्राप्त हुआ था।

[सं. एल-12011/167/2000—आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2147.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 158/2000) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 04/11/2015.

[No. L-12011/167/2000 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/158/2000

General Secretary,

Daily Wages Bank

Employees Association,

Hardev Niwas,

9, Sanwer Road,

Ujjain

...Workman/Union

Versus

The Manager,
Central Bank of India,
CBI, Regional Office,
6/3, Race Course Road,
Indore.

...Management

AWARD

Passed on this 15th day of September 2015

1. As per letter dated 22-8-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/167/2000/IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Central Bank of India in terminating Shri Sudhir Kumar Shinde w.e.f. 9-6-99 and denial of regularization of his services is legal and justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/4. Case of workman is that in 1985, 1st party workman was engaged on pay scale as peon for 60 days. He worked with devotion to avoid benefit of regularizing artificial break was given to him. the record of working for 60 days was prepared. During 1986 to 1990, he was engaged on work for 60 days during each of the year. He was called for test on 9-3-93 for absorption in regular service. He was called for personal interview at Indore on 10-7-93. After interview, his name was included in select list at Sl. No.17. He was doing work of Dartary sorting vouchers, arranging it, preparing its bunch etc. during period 15-7-95 to 28-3-98, he was paid wages Rs.30, 43.92, 45 per day. That he worked for total 871 days during 15-7-95 to 8-6-99. He had worked more than 220 days during each of the day. It is reiterated that he was not paid bonus, difference of wages. As he was selected after written test and interview, his name was at Sl. No.17 in Waiting List. Workman prays that 2nd party be directed to absorb him in regular service.

3. 2nd party submitted Written Statement at Pages 7/1 to 7/4 opposing claim of the workman. 2nd party denies that workman was appointed on the post of peon. It is denied that workman was working continuously. It is denied that workman was interviewed after looking the record about his working in 1985. Workman was engaged on daily wages as per exigencies. Workman is not eligible for absorption as regular employee. The panel list was prepared and as per directions given by RBI, workman was not appointed. The list has become irrelevant. Workman was paid wages for his working days. He had not completed 240 days during 15-7-95 to June 1999. As

RBI had issued directions, workman was not given appointment as per the select list.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the action of the management of Central Bank of India in terminating Shri Sudhir Kumar Shinde w.e.f. 9-6-99 and denial of regularization of his services is legal and justified?”	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. Though workman has raised present dispute challenging termination and denial of regularization by management of 2nd party, workman has not participated in reference proceeding. He has not adduced any evidence in support of his claim. The evidence of workman was closed on 7-5-2014.

6. 2nd party also failed to adduce evidence. Evidence of 2nd party is closed on 7-4-2015.

7. On behalf of workman, Shri Ram Nagwanshi representative of Union produced zerox copies of Exhibit W-1 to W-13- documents in R/11/04. When 2nd party has denied continuous working for more than 240 days of the workman during 95 to 99, workman has not adduced any evidence. They have not participated in reference. 2nd party also claimed that as per direction by RBI, no appointment was given to workman. The Waiting List has become irrelevant. In absence of any evidence by workman to substantiate his claim, the claim of workman cannot be accepted. For above reasons, I record my finding in Point No.1 in Negative.

8. In the result, award is passed as under:-

- (1) The action of the management of Central Bank of India in terminating Shri Sudhir Kumar Shinde w.e.f. 9-6-99 and denial of regularization of his services is legal and proper.
- (2) Workman is not entitled to any relief.
- (3) Parties to bear their own cost.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ 2148.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक बैडोदा के प्रबंधन के संबंध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (217/97)

को प्रकाशित करती है जो केन्द्रीय सरकार को 04.11.2015 को प्राप्त हुआ था।

[सं. एल 12012/246/96.—आई आर (बी.—II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2148.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 217/97) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 04/11/2015.

[No. L-12012/246/96 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/217/97

Shri Sailesh Tiwary, 27,
Ayodhya colony, Koderia Village,
Indore

...Workman

Versus

Regional Manager,
Bank of Baroda,
Plot No. 238,
Zone-I, Maharana Pratap Nagar,
Bhopal

...Management

AWARD

Passed on this 16th day of September, 2015

1. As per letter dated 22-7-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L- 12012/246/96/IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Bank of Baroda, Bhopal in terminating the services of Shri Shailesh Tiwary S/o Shri Shyam Sundar Tiwary w.e.f. 31-5-94 is legal and justified? If not, to what relief the said workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim through General Secretary, Daily wage Bank Employees Union at Page 3/1 to 3/4. Case of Ist party is that workman Shailesh Tiwary authorized General Secretary of Union to

submit statement of claim on his behalf. That workman Shailesh Tiwary was engaged as daily wagger for sweeping, cleaning, dusting etc. work by Branch Manager Shri A.K. Jadhav. From 22-8-92, he was paid Rs. 25/- per day. Workman was doing work of distribution of dak giving drinking water etc. from 22-8-92, workman was continuously working without complaint against him. His wages were increased time to time. He was paid wages from Monday to Saturday 6 days in a week by voucher. Workman was working under different Branch Managers. He was paid wages under voucher. The record of Attendance Registers, token book, cashier scroll are maintained by the Bank. He worked for 2 years. On his request for payment of bonus, his services were terminated on 31-5-94 without notice. He was not paid 3 months salary before terminating his services. Workman reiterates that despite continuously working for 20 days in a year, his services were not regularized. He is covered as employee under Section 25 B of ID Act. His services are terminated without paying retrenchment compensation in violation of Section 25-F and Para 507, 524 of Sastry Award. 2nd party not followed principles of last come first go. Thereby 2nd party violated Section 25-G,N of ID Act. After terminating his services Bank engaged other daily wage employees. Workman was not engaged. Thereby 2nd party violated Section 25 H of ID Act. After termination of his service, it finds difficult to maintain his family. On such ground, Ist party prays for reinstatement with backwages.

3. 2nd party filed Written Statement at Page 10/1 to 10/9 opposing claim of Ist party. 2nd party submits that he General Secretary of Union has no locus standi to represent workman. Management granted work of cleaning to contractor Sudhir Kumar who was doing the business in the name and style of safai syndicate. Workman was engaged by said contractor. That contractor is necessary party. The reference order is illegal as workman was not engaged by the Bank. There is no question of his termination by Bank. The employer employee relationship is not existing between parties.

4. 2nd party further submits that workman shailesh Tiwary was engaged by Mhow branch for fetching water at Rs.25/- per day from 22-8-92 to 16-12-92 for 88 days. Workman was paid wages from Sundry charges account. Subsequently work of cleaning, fetching was given under contract to Sudhir Kumar carrying business in name of Safai Syndicate. 2nd party submits the dispute is raised alleging termination of workman. 2nd party reiterates that workman was not its employee. His services were not terminated. The termination of workman does not amount to retrenchment rather it is covered under Section 2(oo)(bb) of ID Act. That engagement of workman was intermittent on contract basis. Provisions of Section 25 B, 25-F of ID Act are not attracted. Workman was not sponsored through Employment Exchange. The vacancies were not notified in Employment Exchange. The intermittent engagement of workman as stop gap arrangement is not violative of Article 16(1) of the constitution. The reservation policy of government for SC,ST, OBC etc.

needs to be followed by 2nd party in regular appointments. It is reiterated that workman was engaged on daily wages for 88 days in 1992. Workman had not completed 240 days continuous service. Section 25-F of ID Act is not attracted. All adverse contentions of workman are denied. 2nd party submits that workman is not entitled to any relief. Termination of workman is not illegal.

5. Ist party filed rejoinder at Page 19/1 to 19/2 reiterating its contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the action of the management of Bank of Baroda, Bhopal in terminating the services of Shri Shailesh Tiwary S/o Shri shyam Sundar Tiwary w.e.f. 31-5-94 is legal and justified?”	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

7. Workman is challenging termination of his service for violation of Section 25-F,G,H of ID Act. Workman claims that he had worked for more than 240 days from 22-8-92 till his termination 31-5-94. Workman did not adduce evidence in support of his claim. Shri Ram Nagwanshi Union Secretary submitted in writing on 20-11-13 that workman not adducing evidence.

8. Management filed affidavit of witness Shweta Chandel. The evidence of workman was closed on 8-12-2014. Affidavit filed by management's witness pertains to the application for production of documents. Management has not filed affidavit of evidence in the matter. Thus both parties have not adduced evidence in the matter. There is no evidence on record that workman had completed more than 240 days working during any of the year when management has admitted only 88 days working by workman in 1994. That contentions of workman about his continuous work for more than 240 days during the period 22-8-92 to 31-5-94 is not supported by any evidence. Claim of workman that his services are terminated illegally in violation of Section 25-F,G,H of ID Act is not established. Therefore I record my finding in Point No.1 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management of Bank of Baroda, Bhopal in terminating the services of Shri shailesh Tiwary S/o Shri Shyam Sundar Tiwary w.e.f. 31-5-94 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट संदर्भ संख्या (93/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-11-2015 को प्राप्त हुआ था।

[सं. एल-12012/70/2005-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 93/05) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 04/11/2015.

[No. L-12012/70/2005-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/93/05

Shri Gangaram Parmar,
S/o Shri Gajiram Parmar,
Hall Niwasi,
Vill & PO Bhaavra,
Tehsil Aashta, Dt. Sehore
Sehore (MP)

...Workman

Versus

Manager,
Indian Bank, Circle Office,
Upper Ground Floor,
World Trade Centre,
Babar Road,
New Delhi.

...Management

AWARD

Passed on this 13th day of October 2015

1. As per letter dated 6-9-05 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/70/2005-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Manager, Indian Bank in terminating the services of Shri Gangaram Parmar w.e.f. 31-10-03 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/5. Case of workman is that he was appointed on permanent vacant post of sweeper in January 1987. He was posted under 2nd party No.2 on monthly salary of Rs. 740/- which was less than minimum wages fixed by Central Government. He was working continuously till 31-10-03. His services were terminated. Workman reiterates that he was appointed on permanent vacant post. He was performing duties satisfactorily. Workman was also paid wages for extra work. He was continuously working more than 240 days during the period 1987 to October 2003. He acquired status of permanent employee. His services were terminated in violation of statutory provisions and principles of natural justice. He was not given opportunity for defence. Any chargesheet was not issued to him. Enquiry was not conducted against him. The termination is in colourable exercise of powers. His termination amounts to illegal retrenchment. Workman submits that he was continuously working with 2nd party for about 16 years. He is left in starving condition. Workman prays for his reinstatement with backwages.

3. 2nd party management filed Written Statement at Page 12/1 to 12/7 opposing claim of workman. 2nd party reiterates that workman was engaged by Bank Manager as casual sweeper for sweeping and cleaning branch premises on Rs.450/- per month. The engagement of workman was unauthorised without following the prescribed rules. Workman was engaged at Rs. 450/- per month. He was wrongly paid Rs. 740/- per month. His financial irregularity was tried to be set right. Workman stopped cleaning sweeping work, he did not come to the Bank of his own. Claim of workman for reinstatement as part time sweeper with full backwages cannot be allowed. Workman was not terminated by management. He himself stopped working. It is denied that workman was terminated vide order dated 31-10-03. Workman had not completed 240 days continuous service during any of the year. Workman was engaged as casual sweeper on pro-rata wages. Workman has no right of employment as he was not appointed by the Bank. The long period of ad hoc employment does not give right of regularization to the workman. Workman was not holding any post. Provisions of Section 25 of ID Act are not attracted. Workman is not entitled for reinstatement with backwages. Workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the action of the management of Manager, Indian Bank in terminating the services of Shri Gangaram Parmar w.e.f. 31-10-03 is justified?”	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of ID Act. In support of his claim, workman filed affidavit of his evidence. In his affidavit of evidence, workman says that he was working as sweeper with 2nd party from 1987 to 31-10-2003. He was paid Rs. 740/- per month. Any chargesheet was not issued to him. During leave period of regular employees, other works were extracted from him. He was paid for such work. He worked more than 240 days during each of the year till his termination on 31-10-03. His services were orally terminated without any notice. Any chargesheet was not issued to him. He was working from 9 AM to 5 PM. He was working for about 16 years with 2nd party. Termination of his service is illegal. He claimed reinstatement with backwages. In his cross-examination, workman says appointment letter was not issued to him. The post was not advertised. He was interviewed along with 3 persons. He was selected after interview. Ram Singh was interviewed with him. He was unable to tell name of other persons interviewed with him. Order of his termination was not issued to him. He was doing sweeping, cleaning work. He denies that after doing sweeping work, he was leaving Bank, he was not doing any other work. He denied that he was paid Rs. 60/- for 3 hours working per day. Workman reiterates that he was paid Rs. 700 per month. He admits Exhibit W-1 Rs. 60 shown is correct. In 2003, he was paid Rs. 700. Amount paid to him was correctly recorded. He admits that Rs. 60 or Rs.700 per month is not correct. Mischief was committed with him. He produced document P-3, P-4- complaints to the officers. Those documents needs to be exhibited as referred by 2nd party in cross-examination of workman. Workman denied that he was engaged for working as 3 hours per week at Rs. 60 per month.

6. The documents produced by workman Exhibit W-1 extract of Bank account shows that he worked more than 240 days from November 02 to October 2003. The entries of Rs. 740 are recorded every month during above

period. Exhibit W-1 further shows payment made to workman at various rates since 1987 to October 2003. Evidence of workman is corroborated from entries in Exhibit W-1. The document Exhibit W-2 shows payment of wages to workman for extra work since April 91 to July 97. Exhibit W-2 also corroborates evidence of workman that he was paid wages for extra work.

7. Management filed affidavit of Branch Manager Gangaram supporting contentions of management that workman was engaged as casual sweeper at Bager branch for 1 or 2 hours in morning, no other work was taken from him except cleaning premises of the branch. Workman was engaged at Rs. 450 per month. Workman was wrongly paid Rs. 750 per month by Branch Manager when such financial irregularity was tried to be set right, workman stopped cleaning sweeping work from 1-11-03. Workman was not terminated by management. In para 12 of his affidavit, witness says workman was wrongly paid Rs. 740 per month. Workman had not completed 240 days working during any of the year. Workman himself stopped cleaning sweeping work. Workman was not appointed by the Bank. He has not served for 16 years in the Bank. Management's witness further says that workman was not paid bonus or increment. He was not given CL, EL, Medical Leave etc. Management's witness in his cross-examination says that he was posted in Bager branch from 9-7-03. During this period, workman was working as part time sweeper. Workman was not continuously working from 1987 to 31-10-03. He denies that after 1-11-03, other person was engaged for sweeping work. From year 2000, workman was wrongly paid Rs. 740 per month. He claims ignorance whether any action was taken against concerned officer. Workman was not served with notice of termination, compensation was not paid to him. Notice was not issued to workman for his absence from work. He denies that other work was extracted from workman.

8. Management's witness has not produced any documents as to how payment of Rs.740/- per month was wrongly paid to workman. No document is produced about the wages to be paid to casual/ part time sweeper. In absence of such documents, the evidence of management's witness cannot be accepted. Management's witness has not produced any documents that recovery of excess amount paid to workman was initiated against the workman therefore evidence of management's witness that workman himself stopped cleaning, sweeping work cannot be believed.

9. As discussed above, the evidence of workman about continuously working from December 87 to October 2003 is corroborated by document Exhibit W-1. Workman was paid wages for other work which is supported by document Exhibit W-2. Workman has established that he was continuously working more than 240 days during 1987 to October 2003. Management's witness admits workman

was not issued notice of termination. Compensation amount was not paid to workman.

10. Learned counsel for 2nd party Shri R.K.Agrawal during course of argument pointed out my attention to Document P-3, P-4. In P-4 workman has referred himself as temporary sub staff and not as regular employee.

11. Shri R.K.Agrawal further submits that provisions of Section 25-F are not applicable as workman was part time employee, he was not appointed following rules and regulations. Section 25-F does not make a difference between regular or part time employees. Workman was engaged as part time casual sweeper, he completed more than 240 days continuous service during each of the year during 1987 to 2003. Workman is entitled to protection of Section 25-F. He was not served with notice, retrenchment compensation is not paid to workman therefore termination of workman by 2nd party is in violation of Section 25-F of I.D. Act. For above reasons, I record my finding in Point No.1 in Negative.

12. Point No.2- In view of my finding in Point No.1 termination of workman is illegal for violation of Section 25-F of ID Act, question arises whether workman is entitled for reinstatement with backwages. Workman in his cross-examination says the post was not advertised, he was interviewed with 3 persons and selected. Workman has not produced interview call issued by management. Workman was not engaged following the rules for appointment. Workman was engaged as part time sweeper not against any sanctioned post. Though learned counsel for workman Shri P.C.Paliwal referred to ratio held in AIR-2010-SC-683 but the citation is not made available. I have no opportunity to consider the ratio held in said case. Considering the facts and evidence discussed above, workman was engaged as casual part time sweeper, relief of reinstatement would be appropriate. However workman was working with Bank as part time sweeper from December 1987 to October 2003, compensation Rs. 1,50,000 would be appropriate. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management of Manager, Indian Bank in terminating the services of Shri Gangaram Parmar w.e.f. 31-10-03 is not proper and legal.
- (2) 2nd party management is directed to pay compensation Rs. 1,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2150.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट संदर्भ संख्या (44/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-11-2015 प्राप्त हुआ था।

[सं. एल-12011/56/12-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2150.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 04-11-2015.

[No. L-12011/56/12 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/44/2013

General Secretary,

Dainik Vetan Bhogi Bank Karmchari Sangathan,

Kendriya Karyalaya, F-1, Karmbhumi,

Tripti Vihar, Ujjain

...Workman/Union

Versus

Regional Manager,

Bank of India,

Regional Office, Opposite

Rasoma Laboratory,

AB Road, Indore

....Management

AWARD

Passed on this 30th day of September 2015

1. As per letter dated 8-2-13 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section 10 of I.D. Act, 1947 as per Notification No.L-12011/56/12-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Bank of India in terminating the services of Shri Ashok Kumar Sunhare w.e.f. 20-1-03 is legal and justified? What relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Daily Wages Bank Employees Union. Case of workman is that he was working on daily wages at Indore from 15-3-89 as peon. He was paid wages Rs.32/- per day. His wages were increased time to time. Lastly he was paid Rs.125/-, 130/- per day. He continuously worked for more than 14 years from 15-3-89. He worked more than 240 days during each of the year. He was not paid bonus. On his request for payment of bonus, his services were terminated without notice from 20-1-03. His services were terminated in violation of Section 33 of ID Act during pendency of conciliation proceeding before ALC, Bhopal. That he is covered as employee under Section 25 B of ID Act. His services are terminated in violation of Section 25-F of ID Act. On such ground, workman prays for his reinstatement with back wages.

3. 2nd party filed Written Statement opposing claim of the workman. Preliminary objection is raised that Shri Ram Nagwanshi, so called General Secretary of Union is not competent to raise the dispute as he was dismissed employee of State Bank of Indore. That in statement of claim filed by workman in R/160/93, he has pleaded that he worked from 15-3-89 to 7-11-02 whereas in present case, he claims his services were retrenched from 22-1-03 in violation of Section-33 of ID Act. The dispute raised about the same matter is liable to be rejected. Ist party is not covered as workman under Section 2(s) of ID Act as he was not appointed by the Bank following recruitment process. Workman was engaged on daily wages as per exigencies for casual nature of work. The Bank has to follow the policies of Government about reservation of SC,ST,OBC etc. Workman was not sponsored through Employment Exchange. 2nd party denies that workman was engaged from 15-3-89. However his engagement on daily wages as per requirement is not disputed. All adverse contentions of workman are denied.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the action of the management of Bank of India in terminating the services of Shri Ashok Kumar Sunhare	In Affirmative
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w.e.f. 20-1-03 is legal and justified?

(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.
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REASONS

5. As per terms of reference, workman is challenging termination of his service. His claim is opposed by 2nd party filing Written Statement. On 23-4-14, Shri R.Nagwanshi representative of Union on behalf of workman submitted in writing that workman does not desire to adduce evidence. Shri R.Nagwanshi submitted copies of award passed in R/180/00, 105/03 in support of the claim of workman. When workman has not adduced any evidence, management of 2nd party also not adduced any evidence in the matter. For absence of evidence of both the parties, the claim of workman about legality of termination in violation of Section 25-F cannot be accepted. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

- (1) The action of the management of Bank of India in terminating the services of Shri Ashok Kumar Sunhare w.e.f. 20-1-03 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2151.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट संदर्भ संख्या (33/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-11-2015 को प्राप्त हुआ था।

[सं. एल-12012/81/2008-आई आर (बी.II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2151.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/09) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 04-11-2015.

[No. L-12012/81/2008-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/33/09**

Shri Intezhar Ali,
s/o Shri Barkat Ali,
R/o near Baba Kapoor,
Golandaj Mohalla,
Qilagate,
Gwalior.

...Workman

Versus

General Manager,
Union Bank of India,
Zonal office, Arera Hills,
1513/1/1, Jail Road,
Bhopal.

...Management

AWARDPassed on this 15th day of September, 2015

1. As per letter dated 25-2-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/81/2008-IR(B-II). The dispute under reference relates to:

“Whether the claim of the workman that he has completed 240 days of services in a calendar year that his services were terminated w.e.f 30-6-2006 without following the procedure of ID Act, 1947 and that he should be reinstated by the management of Union Bank of India is legal and justified? What relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to parties. Workman submitted statement of claim. Case of workman is he was appointed against clear vacancy of peon from 15-12-02. Workman rendered his services as peon in new High Court Branch. He was continuously working till 30-6-06. He rendered more than 240 days service in each of the calendar year in office of 2nd party No.3. He is covered as employee under Section 25 B of ID Act. Initially he was paid Rs. 50 per day by 2nd party No. 3. Subsequently the wages were increased to Rs.60 per day. His remuneration were paid form petty cash mode for the period 15-12-02 to 28-11-04 and onwards till 30-6-06. Payment was made through vouchers Bank Account No. 8841900. Workman has prayed that 2nd party No. 3 be directed to pay difference.

3. Ist party further submits that he was not paid bonus 8.33 %. He had submitted complaint to the Competent Authority but no action was taken. In repellant to his complaint, 2nd party No. 3 dispensed with services from 30-6-06 without otice or compensation in lieu of notice in violation of Section 25-F of ID Act, he was working as messenger. After dispensing his services, 2nd party engaged one Munna in his place in violation of Section 25-G.H of ID Act. Workman filed Writ petition 4153/2006. Writ petition was dismissed as withdrawn on 25-9-06 with liberty to raise ID. On such ground, workman is praying for reinstatement with backwages.

4. 2nd party filed exhaustive Written Statement opposing claim of workman. 2nd party submits contentions of workman in his statement of claim are false, fabricated. 2nd party Bank is nationalized Bank incorporated under Bank Act 1970. Workman was never appointed by the Bank in any post. There is no employer employee relationship. The reference is not tenable. Ist party is not covered as workman under Section 2(s) of ID Act. As workman was never appointed by Bank, there is no question of his termination.

5. 2nd party submits that it has rules and procedure for appointment of sub staff. Central Office of Bank identifies vacancies and enforced to the zonal/ Regional office, call names of eligible number of candidates from Employment Exchange of different categories. The candidates reported from Employment Exchange are interviewed. After verification of eligibility, 3 member Board carries interview, the selected candidates after medical examination are appointed. Ist party workman had not gone through prescribed selection process.

6. 2nd party submits that for certain casual work, services of workman were utilized. He was paid amount, he was not appointed as regular employee. It is denied that workman was appointed by Branch Manager. The engagement of casual employee come to end at end of the day. 2nd party has referred to ratio held in various cases. That claim of workman cannot be allowed. 2nd party had denied workman completed 240 days continuous service and is covered under Section 25 B of ID Act. It is reiterated that workman was not appointed on regular post. He was engaged as casual labour. There was no question of his termination. Provisions of Section 25-F are not attracted. It is denied that after discontinuing workman, one Munna was employed in violation of Section 25-G,H of ID Act. Writ Petition filed by workman was dismissed as withdrawn. It is reiterated that workman is not entitled to any relief.

7. Workman filed rejoinder reiterating his contentions in statement of claim.

8. Considering pleadings on record, the points which arise for my consideration and determination are as

under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether it is proved that workman completed 240 days service in a calendar year?	In Negative
(ii)	Whether services of workman are terminated from 30-6-06 without following procedure of ID Act 1947?	In Affirmative
(ii)	If so, to what relief the workman is entitled to?"	As per final order.

REASONS

9. The terms of reference pertains to whether workman has completed 240 days continuous service and his services are terminated in violation of provisions of ID Act, 1947, whether workman is entitled for reinstatement. Section 25-F provides-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and
- (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

Section 25 B provides-

For the purpose of this chapter-

- (i).....
- (ii) where a workman is not in continuous service within the meaning of clause (I) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) For period of one year, if the workman during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer not less than-

- (i) One hundred and ninety days in the case of a workman employed below ground in a mine and
- (ii) 240 days in any other case.

Keeping above provisions in view, the evidence of parties needs to be appreciated. Ist party workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was appointed as peon against clear vacancy on 15-12-02 by Branch Manager. He rendered continuous service in city centre, New High Court Branch. He was paid salary through cash vouchers bearing Account No. 88419000. He was not paid 8/33 % bonus. He had complained to Competent Authority. his services were dispensed with without notice or pay in lieu of notice. He rendered 240 days continuous service till 2006. In his cross-examination, workman says he was not given appointment letter, he claims ignorance about selection process. he was not interviewed. No written test was taken. He has produced documents payment vouchers about his working more than 240 days. Written order terminating his service was not issued. Workman has produced documents Exhibit W-1 receipt for payment of wages for 17 days from 24-4-06 to 12-5-06. Exhibit W-2 receipt of payment of wages for 18 days 15-5-06 to 3-6-06. Receipt Exhibit W-3 payment of wages for six days from 17-10-05 to 22-10-05. Receipt Exhibit W-4 includes payment of wages for 6 days 29-8-05 to 3-9-05, Exhibit W-5 includes payment of six days wages from 3-10-05 to 8-10-05. Exhibit W-6 includes payment of wages for 5 days 10-10-05 to 15-10-05. Exhibit W-7 payment of wages for 6 days 26-9-05 to 1-10-05. Those receipt Exhibit W-3 to W-7 also includes other payments. Exhibit W-8 payment of wages for 11 says. 19-6-06 to 30-6-06. Exhibit W-9 payment of 5 days wages 22-8-05 to 26-8-05. Exhibit W-10 is payment of wages for 8 days from 30-1-06 to 7-2-06. The document Exhibit W-11, 12,13,14,15 pertains to other payment made by Bank. Workman had submitted application for production of documents. 2nd party was directed to produce documents as per order dated 19-3-2013. 2nd party has not produced documents.

10. 2nd party filed affidavit of evidence of witness Shri Sushil Kumar singh supporting its contentions of management in Written Statement. From his evidence, documents M-1 to M-6 are admitted. From evidence in cross-examination, documents Exhibit W-1 to W-15 are admitted in evidence. Management's witness in his cross-examination denies that documents relating to payments made to the workman are not produced. He claims ignorance whether seniority list of temporary messengers peon was prepared. Workman was not served notice of retrenchment, compensation was not paid to workman. management's witness claims ignorance of Account No. 88419000. Despite workman had requested production of documents, 2nd party has not shown its detail in Written statement. The documents are not produced by management as per order dated 19-3-13. Evidence of

workman is supported by some documents. 2nd party employer failed to produced documents even after order. It is clear that 2nd party has suppressed relevant documents. If evidence of Ist party workman and management's witness is carefully appreciated, management's witness has no personal knowledge as he was not working in city centre branch. Therefore the evidence of workman deserves to be accepted. For non-production of documents, adverse inference deserves to be drawn that as per order dated 19-3-13, the documents would have supported claim of workman. Therefore the evidence of workman is accepted that he completed more than 240 days service preceding 12 months of his termination. My conclusions are also supported by documents produced by management-Exhibit M-1 to M-6. Workman was paid wages time to time. Management's witness admits that notice was not issued to workman, compensation was not paid to him, therefore termination of service of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1in Negative and 2 in Affirmative.

11. Point No.3- In view of my finding in Point No.1 service of workman are terminated without notice in violation of Section 25-F of ID Act, question arises whether workman is entitled for reinstatement with backwages. Workman in his cross-examination says he is working as labour. In support of his arguments, learned counsel for workman Shri Pranay Choubey relies on ratio held in case of Devinder Singh versus Municipal Council Sanaur . In para 24, their Lordship held we are also convinced that the reasons assigned by the High Court for setting aside the award of reinstatement are legally untenable. In the first, it deserves to be noticed that the respondent had engaged the appellant in the back drop of the ban imposed by the State Government on the filling up of the vacant posts. The respondent had started a water supply scheme and for ensuring timely issue of the bills and collection of water charges, it needed the service of a clerk. However on account of the restriction imposed by the State Government, regular recruitment was not possible. Therefore resolution dated 27-4-95 was passed for engaging the appellant on contract basis. Copy of resolution No. 30 dated 27-4-95 is considered by their Lordship that resolution was passed that Devinder Singh was engaged for period of six months on part time basis on salary of Rs.1000.

In para-26, their Lordship concluded if what the High Court has done is held to be justified, gross illegalities committed by the employer in terminating the services of workman will acquire legitimacy in majority of cases.

Next reliance is placed in

Case of Director, Fisheries Terminal Division versus Bhikubhai Meghajibhai Chavda. From Para-4 of said judgment, it is clear that workman before Labour Court

was employed as watchman and he was paid daily wages and his presence was also marked in the muster roll. In para 16, their Lordship observed that the appellants have clearly failed to prove the services of no junior employee was continued when the services of the respondent was terminated. Section 25-G has also not been followed.

In present case, though workman says Munna was appointed after his discontinuation, no cogent evidence is adduced on the point. Violation of Section 25-G is proved in view of admission of management's witness claim ignorance seniority list of temporary employees is displayed or not. When seniority list was not displayed on notice board, workman was engaged on daily wages. He was not appointed as regular employee. In my considered view, reinstatement of daily wagger is not appropriate, reasonable compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in point No. 3.

12. In the result, award is passed as under:-

- (1) The action of management is not proper.
- (2) 2nd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2152.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 160/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 प्राप्त हुआ था।

[सं. एल-12011/126/2003-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2152.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 160/03) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 04/11/2015.

[No. L-12011/126/2003 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/160/03

General Secretary,
 Daily Wages Bank Employees Association,
 Hardev Niwas, 9,
 Sanwer Road, Ujjain ...Workman/Union

Versus

Zonal Manager,
 Bank of India,
 Zonal office, 22,
 Yashwant Niwas Road,
 Indore ...Management

AWARD

Passed on this 1st day of October, 2015

1. As per letter dated 18-9-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/126/2003-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Bank of India in not regularizing the services of Shri Ashok Sunhare and not paying him bonus is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim through General Secretary, Daily Wages Bank Employees Union at Page 3/2 to 3/8. Case of Ist party is since 15-3-89, he was working with 2nd party Bank as daily wage peon. He was paid scale wages. His signatures were obtained on payment voucher dated 25-2-92, 8-9-93. All branches were informed that badli peon working more than 240 days in a year were eligible for regular appointment. As per circular dated 24-8-84, the daily wage peons were entitled for payment of wages. That Ist party workman had worked more than 240 days during each of the year from 15-3-89 to 31-5-93. Bonus of Rs. 853.48, 1113, 1112, 1110 were paid to him for the year 1991, 92, 93, 95. The attendance of workman was maintained in muster roll by Branch Manager. Ist party workman reiterates that he completed 240 days continuous service during each of the year. He is covered as employee under Section 25 B of ID Act. His services were terminated on 22-1-03 without notice in violation of Section 33 of ID Act. On 7-11-02, ALC Bhopal had directed management not to terminate service of workman. Workman reiterate that his services were terminated in violation of Section 25-F, G, N of ID Act. On such ground, workman prays for

reinstatement in service and bonus. The terms of reference pertains to denial of regularization and not paying bonus. The legality of termination of workman is not included in terms of reference.

3. 2nd party filed Written Statement at Page 11/1 to 11/14 opposing claim of the workman. Preliminary objection is raised by 2nd party that Shri Ram Nagwanshi was terminated from service of the Bank. He was not employee of the Bank. Shri R. Nagwanshi is not competent to raise dispute. That Ist party workman is not covered under Section 2(s) of ID Act as he was not appointed in Bank's service. Ist party has not disclosed anything in regard to his employment in management. It is reiterated that the reference made by Government is misconceived. The Government has decided disputed questions while making the reference. Workman claimed reinstatement and other benefits contending that his services are illegally terminated in violation of provisions of ID Act. The employees appointed following prescribed procedure are regular employees. Branch Manager is authorized to engage sub staff temporarily during the period or increase of work. Ist party workman was not sponsored through Employment Exchange. The vacancies were not notified to Employment Exchange. The reservation of SC ST OBC as per policy of Government is required to be followed. Such procedure was not followed before engagement of workman. The persons engaged on temporary basis cannot be appointed permanently. Ist party workman was not appointed by Competent Authority. He was engaged on daily wages for few days for increase of work. He never worked for more than 240 days during any of the year. Workman was not appointed on permanent basis after holding interview as per bipartite settlement. All adverse contentions of workman have been denied. Workman was not appointed on regular basis. No unfair labour practice is committed by management. Management has not violated any statutory provisions. Violation of Section 33 of ID Act is also denied. Bank cannot provide employment to all unemployed persons as its sources are limited. On such ground, 2nd party prays to answer reference in its favour.

4. Ist party workman submitted rejoinder at Page 14/1 to 14/3 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the action of the management of Bank of India in not regularizing the services of Shri Ashok Sunhare and not paying him bonus is justified?”	In Affirmative
“(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

6. The terms of reference pertains to denial of regularisation of workman and non-payment of bonus. Legality of termination of service of workman is not covered under the reference.

7. Workman filed affidavit of his evidence that he was working as peon on scale wages from 15-3-81 to termination of his service on 20-1-03. He worked more than 240 days. During 1-8-91 to 31-7-92, he worked for 228 days. During 1-6-92 to 31-6-92 he worked for 242 days. He was paid wages for the period 30-5-89 to 19-3-94. He was paid bonus Rs.110/- for 1993-94, Rs.113/- for 1994-95. Nand Kishore Peon having less number of working days was absorbed in permanent service. He had raised dispute before ALC Bhopal No. BPL-7(67)/03. In his cross-examination, workman claims ignorance whether in his affidavit of evidence, pay scale is written. He was engaged by Branch Manager Amar Kumar Kalu his name was not sponsored through Employment Exchange, public notice was not issued. As Manager Kaku was of his acquaintance, he was engaged in the Bank. Appointment letter was not issued to him. Zerox documents about payment of wages are produced on record. He received those documents in 1999. From 1989 to 2003, he worked in same branch on daily wages. He was engaged on work as per exigencies. His signatures were obtained on payment voucher. He was unable to tell his working days in particular year. He admits payment of bonus for the year 1991-92 but he was unable to tell the number of days for which bonus was paid.

8. Management filed affidavit of evidence of witness Shri Umesh Chand Chaturvedi supporting contentions of the management in Written Statement. That workman was never paid bonus. He not completed 240 days continuous service. Workman was not engaged by Branch Manager. Workman was not engaged against permanent sanctioned vacancy. He was paid daily wages. His engagement was on day to day basis. His engagement was of temporary nature. Management's witness in his cross says that directions in Exhibit M-1, M-2 about temporary engagement of workman were not complied. He was working in kanchanbagh mine during 2001-03. During his tenure, workman was engaged by rotation. The rotation list is not produced. He had discussed the matter with Branch Manager. Sinha and Mr. Biswanath. Attendance register of workman was not maintained. Wages paid to the workman were reimbursed to the Branch Manager, its documents not produced on record. No document is produced about working days and payment of wages paid to workman. Workman was not paid retrenchment compensation, he was not issued termination notice. As the term of reference pertains to denial of regularisation and non-payment of bonus, the evidence of management's witness in present case workman was not paid

retrenchment compensation, he was not served termination notice is of no consequence. Above evidence has no relevance to the denial of regularisation. If evidence of workman and management's witness is carefully appreciated, the management's witness has not produced relevant documents about working days and payment of wages to the workman. There is no denial in evidence in cross examination of workman that he was working from 15-3-89 to 20-1-03. That workman was engaged in the Bank for about 14 years is not challenged. The evidence of the workman would show that he was engaged on daily wages for years together and as it may amount to unfair labour practice covered under Item 10 Schedule V of ID Act, the claim for regularisation of workman would have been justified. However the terms of reference in present case relates to denial of regularisation. The termination of workman was under challenge in R/44/13. As workman did not adduce any evidence in R/44/13, the award is passed against workman. When workman is not in service and R/44/13 pertaining to termination of service of workman is answered against him, claim of workman for regularisation in service cannot be allowed.

9. Learned counsel for 2nd party Shri A.K.Shashi relies on ratio held in case of

Tilak Singh Tomar versus State of MP and others reported in 2000 LLR 971. His Lordship of MP High Court held that the completion of 240 days work doesnot under the Industrial law import the right to regularization and it merely imposes certain conditions on the employer.

In case between Indian Drugs and Pharmaceuticals Ltd. versus workmen Indian Drugs and Pharmaceuticals Ltd. reported in 2007(1) SCC 408. Their Lordship of the Apex Court held the Court cannot create a post where none exists nor issue directions to absorb or regularize temporary employees nor continue them in service nor pay them salaries of regular employees as these are purely executive or legislative functions. In Para 34, their Lordship observed that there can be no regularization dehors the rules.

In case between Hindustan Aeronautics Ltd. versus Dan Bahadur Singh and others reported in 2007(6)SCC 207. Their Lordship dealing with status and right of daily rated employees held not equitable that of Government Servant. In absence of availability of the post, such employee is not entitled to absorption as regular employee.

In case between Dhanpur Sugar Mills versus Bhola Singh reported in AIR 2005-SC-1790. Their Lordship dealing with regularization of service held completion of 240 days of continuous service in a year may not itself be ground for regularization of service.

In case of MP State Agro Industries Development Corp.Ltd. and another versus S.C.Pandey reported in 2006(2) SCC-716. Their Lordship dealing with status and rights of casual labour held on completion of 240 days

continuous service itself would not confer right for regularization in service.

In present case, the evidence shows workman was engaged on daily wages for about 14 years would amount to unfair labor practice under Item 10 of ID Act. However the workman has been terminated from service. The termination of workman is challenged in R/44/13. The claim of workman is not upheld. When workman is not in service, his claim for regularization cannot be accepted. For above reasons, I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of Bank of India in not regularizing the services of Shri Ashok Sunhare and not paying him bonus is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 4 नवम्बर, 2015

का.आ. 2153.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 134/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/11/2015 को प्राप्त हुआ था।

[सं. एल-12012/151/96-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th November, 2015

S.O. 2153.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 134/97) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 04/11/2015.

[No. L-12012/151/96 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/134/97

Shri Some B.Ghoke,
House No. 24,
Near Phooti Bhavdi Durga Mandir,
Pushpa Nagar,
Bhopal.

...Workman

Versus

Zonal Manager,
Bank of India,
Zonal Office, Jail Road,
Arera Hills, Bhopal

...Management

AWARD

Passed on this 1st day of October, 2015

1. As per letter dated 16-5-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/151/96/IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Bank of India in terminating the services of Shri Soma B.Ghoke and also stoppage of two future increments with cumulative effect w.e.f. 11-1-94 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of Ist party workman is that chrgesheet was issued to workman on 18-10-91, corrigendum issued to him on 25-2-92. Workman was suspended on 8-2-91. Workman submitted reply to chargesheet denying charges against him. Enquiry was initiated against him. Workman contented that enquiry be recorded in Hindi, he repeatedly gave applications in that regard. His request was not acceded to and he same was done only at fag end when he was proceeded exparte. The evidence was closed without granting him opportunity for his defence. He submitted application dated 27-8-92. His defence representative declined to participate in proceeding, requested permission to appoint Advocate for his defence. His request was acceded after completion of enquiry. He did not get opportunity for his defence. He submitted application dated 27-8-92. His defence representative declined to participate in proceeding, requested permission to appoint Advocate for his defence as request was acceded after completion of enquiry. He did not get opportunity for his defence. The principles of natural justice were not followed by Enquiry Officer. He acted under influence of Disciplinary Authority. Enquiry Officer did not submit his report with appropriate reasons. The findings of Enquiry Officer are without application of mind and came to conclusions. The findings are not based on evidence. Showcause notice issued to workman was replied in detail. The Issuing Authority did not consider his contentions in reply. That enquiry is conducted against him in contravention of service regulations and principles of natural justice. That dismissal from service of workman

is based on illegal findings, is violative of Constitution. On report of Enquiry Officer, punishment of dismissal, withholding two annual increments are illegal. On such ground workman prayed for his reinstatement.

3. 2nd party filed Written Statement at Pages 6/1 to 6/7. 2nd party submits that 1st party workman during course of service committed misconduct. Chargesheet was issued to him on 18-10-91 and corrigendum on 28-2-92. The misconduct proved against workman related to fraudulent loan Account opened in name of Ghansham and mis-utilised the Bank funds of Rs.61,500. Workman fraudulently obtained signature of workman on bank loan application for wrongly representing the documents related to employment in the Bank. The 1st party workman fraudulently withdrawn Rs.5000/- forging signature of Ghansham. Workman sanctioned housing loan of Rs.75000/-, 35,000/- for purchasing property situated at No.26, Bharveli Near Barkhedi Railway Phatak, Bhopal. The acts prejudicial to the interest of Bank amounted gross-misconduct. The charges against workman were proved from evidence of Enquiry Officer. Punishment of dismissal was imposed. Appellant preferred appeal before Competent Authority. It is reiterated that enquiry was conducted properly. Workman was given opportunity for his defence. Workman was also given opportunity to produce evidence in rebuttal. It is reiterated that the punishment is imposed for proved misconduct. The evidence of handwriting expert establish the forged signature of Shri Bagde, so called borrower. The proved misconduct of workman is of serious nature. Punishment of dismissal is proper and legal. As the punishment is imposed after conducting enquiry, there is no question of fundamental rights of workman under Article 19.1(g), 21 of the Constitution. The punishment is not arbitrary or illegal. 2nd party prays that award be answered in its favour.

4. As per order dated 27-6-14, enquiry conducted against workman is found proper and legal. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. In view of my finding on preliminary issue, enquiry conducted against workman is found legal and

proper, question arise whether charges alleged against workman are proved from evidence in enquiry needs to be discussed from evidence in Enquiry Proceedings. The documents of enquiry are produced collectively marked as Exhibit M-1. The CBI Officer Shri H.N.Tripathi Investigating in crime was examined as witness of management. The statement before Enquiry Officer shows that Ghansham had complained against workman about raising loan of Rs.80,000 without his knowledge. That he observed that loan of total Rs.66,500 was granted in name of Ghansham for purchase of Cannon 271 Copier machine. The statement of MW-5 Tripathi further shows that Cannon machine was proposed to be purchased by so called Borrower Ghansham from Sunil Kumar Sharma. The payment was made through Sunil Kumar Sharma. That Mr. Sharma had confirmed that he received payment of Rs.62,000, personally delivered to him by Shri Ghoke (workman). The amount of pay slip was later on taken by workman. He has not sold any cannon MP 271 machine to Ghansham. Handwriting Expert Deshpande was examined. As per his opinion, Exhibit M-38, it is confirmed opinion about forgery of signature on above two cheques. The signature was not in handwriting of Shri Ghansham. Management's witness Shri A.K.Solanki in his statement says that he remember having sanctioned loan of second hand photocopy machine to Ghansham Bgde not visiting the branch for signing the documents. He did not remember Ghansham approaching him for said loan. Ghansham himself is also examined as witness and he denied that he taken loan from Bank. That his signature on documents of loan were obtained by workman saying that signatures were obtained for purpose of securing service in the Bank. Re-appreciation of evidence is not permitted while exercising powers of judicial review under Section 11-A of ID Act. The evidence in Enquiry Proceedings is sufficient to prove charges alleged against workman. The findings of Enquiry Officer cannot be said perverse. Therefore I record my finding in Point No.1 in Affirmative.

6. **Point No.2-** The charges alleged against workman pertains to fraud and forgery of documents for sanctioning loan in name of Ghansham. Amount was misused by workman, considering serious charges proves against him, the punishment of dismissal cannot be said excessive. I therefore record my finding in Point No.2 in Affirmative.

7. In the result, award is passed as under:-

- (1) The action of the management of Bank of India in terminating the services of Shri Soma B.Ghoke and also stoppage of two future increments with cumulative effect w.e.f. 11-1-94 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2015

का.आ. 2154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड तथा मेसर्स बिहिव सिक्कूरिटि एण्ड सर्विलेंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 9/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/11/2015 को प्राप्त हुआ था।

[सं. एल-30012/74/2012-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 6th November, 2015

S.O. 2154.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2013) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation, M/s Beehive Security & Surveillance and their workman, which was received by the Central Government on 06/11/2015.

[No. L-30012/74/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR-COURT
NO. 1, KARKARDOOMA COURT COMPLEX,
DELHI**

ID No. 9/2013

Shri Pradeep Kumar,
S/o Shri Ram Kumar,
R/o Village and Post Office Matan,
Tehsil Bahadurgarh,
Distt. Jhajjar,
HARYANA-124 510

...Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s Indian Oil Corporation Ltd.
Tikri Kalan,
Delhi-110 041
2. M/s Beehive Security &
Surveillance, Hose No. 43,
Rathi Enclave,
New Roshan Vihar,
Kakraola More, Najafgarh,
Delhi- 110 043

...Management

AWARD

Central Government, *vide* letter No. L-30012/74/2012-IR(M) dated 20.12.2012, referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the management of M/s Beehive Security & Surveillance in terminating the employment of Shri Pradeep Kumar, S/o Shri Ram Kumar from IOC Depot, Tikri Kalan, Delhi with effect from 14.04.2012, is legal and justified? What relief the workman is entitled to?”

2. Claim statement was filed by the workman and written statements were filed by both the managements. On perusal of pleadings, it was observed by my learned predecessor, on 25.09.2013, that no other issue, than those referred by the appropriate Government for adjudication was made out. Thereafter, the case was listed for evidence of the parties, with directions to the claimant to conclude first. However, despite affording 16 opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 2, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2015

का.आ. 2155.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 73/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/11/2015 को प्राप्त हुआ था।

[सं. एल-30011/53/2012-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 6th November, 2015

S.O. 2155.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73/2012) of the Central Government Industrial Tribunal/Labour

Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 05/11/2015.

[No. L-30011/53/2012 - IR(M)]
NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No.73 of 2012, Reference No. L-30011/53/2012/IR(M) dated 11.1.2013

The General Secretary, Indian Oil Panipat Refinery Employees Union, Panipat Refinery, Panipat.

...Union

Versus

The Chief Human Resource Manager, IOCL, Panipat Refinery, Panipat-132140.

...Respondent

Appearances :

For the Workman : Shri Hari Pal Singh.

For the Management : Shri P. Murlidharan.

AWARD

Passed on: - 02.11.2015

Government of India Ministry of Labour vide notification No. L-30011/53/2012/IR(M) dated 11.1.2013 has referred the following dispute to this Tribunal for adjudication:

“Whether clause 5 of the Settlement dated 8.12.2010 entered on between the management of IOCL, Refineries Division, Panipat Refinery and Indian Oil Panipat Refinery Employees Union under Section 12(3) of I.D. Act, 1947 could be set aside being violative of different sections of Factories Act, 1948 and Industrial Employment (Standing Orders) Act, 1948? If yes, then relief to which Union is entitled?”

2. On receipt of the reference, notices were issued to the parties. The Union appeared and filed claim statement pleading therein that the a memorandum of settlement Under Section 18(i) and 2(P) of Industrial Disputes Act 1947 has been signed on 29.7.2010 between the representatives of Employer and the Union and clause 5 states that in the event of compensatory off accrues to a

workman, the same shall be encashed which is totally against the law as it violates the provisions of Section 53 of Factories Act, 1948. It is pleaded that U/S 53 of the Factories Act, 1948, it is provided that the employee shall be allowed to take rest within two months from the date on which the compensatory off generated and it may not be encashed. In view of the above, the Union prayed that the compensatory off may be given within two months from the date of generation instead of encashment of the same and the relevant provision of Memorandum of Settlement dated 29.7.2010 may be set aside being in violation of the provisions of Section 53 of the Factories Act, 1948.

3. The management filed written statement. Preliminary objection has been taken that Union is stopped in law to challenge the Memorandum of Settlement dated 8.12.2010 which was arrived at in course of tripartite conciliation proceedings between the claimant union and the management which is statutory in nature and binding upon the parties to the settlement. It would also bind even those workmen who may join in future as long as the settlement is in operation and contents of the settlement cannot be altered/varied/modified without the express consent of all the parties to the settlement. Therefore the Union has no claim. Moreover the other units of refineries division (Including Headquarters), Pipelines division, Research and Development Centre and Assam Oil Division etc. of the Corporation as also other different recognised workers unions who are parties and signatories to the settlement dated 29.7.2010 have not been joined as parties in the case. And any adjudication/order which may be passed by this Court in respect of the parties to the settlements would seriously prejudice their rights which would be unjustified in the absence of affording opportunity of hearing to them. It is further submitted that on earlier occasion one of the recognised union raised a dispute on the similar issue against the management of Barauni Refinery before R.L.C (C) Patna and the matter was referred to the Ministry of Labour and the Ministry of labour does not consider the dispute fit for adjudication holding that the management has not violated any rule and adopted any unfair labour practice. The management prayed that the above dispute is misconceived, ill advised, unwarranted and untenable and deserves to be rejected. On merits it is pleaded that settlement was arrived at between the parties on 8.12.2010 wherein it was agreed to pay special computer allowance @8%, 9% and 10% of the Basic Pay to the workmen in cluster A, B and C respectively w.e.f. 1.1.2007 and it was agreed between the parties to the settlement that compensatory off normally would not accrue to workmen, however, in the event of compensatory off accrues to a workman, the same shall be encashed. The settlement is binding on the parties to the settlement having statutory force. It is further submitted that in consonance with the relevant provisions of the Factories

Act, 1948 as well as the above settlement, it was also clarified to all concerned that if a workman works on his weekly off day, he has or will have a holiday for a whole day on one of three days immediately before or after the said day. It is further submitted by the management that workers performing the work on respective weekly holidays are allowed to avail substitute holiday for a whole day on one of three days immediately before or after the said day and as such none is deprived of any weekly holiday for which provisions are made under Sub Section of Section 52 of the Factories Act, 1948. In view of the above the management prayed that the claim of the union may be rejected and the reference may be answered in negative in favour of the management.

4. Both the parties prefer not to lead any oral evidence. The management filed written argument. The representative of the Union orally addresses the arguments.

5. I have gone through the entire record of the case and also gone through the written arguments of the management and documents filed by the parties on record.

6. Clause 5 of the settlement dated 8.12.2010 provides as under:

“With a view to improve productivity, efficiency and profitability of the Corporation in the current competitive business scenario management and Union agree that compensatory off (CO) normally would not accrue to workmen however in the event a compensatory off accrues to a workman, the same shall be encashed. The Union and the management further reaffirm to eliminate unproductive work practices that have been agreed upon as per enclosed annexure-A.”

7. In this context, it is relevant to mention the provisions of Section 53 of the Factories Act, 1948 which provides as under:

“53. Compensatory holidays-(1) Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of Section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost.”

8. The management in para 4 of the written statement pleaded that on earlier occasion, one of the recognised workers unions i.e. Shramik Vikas Parishad, Barauni Refinery raised a dispute on the similar issue against the management of Barauni Refinery before the Regional Labour Commissioner(Central) Patna. On failure of the

conciliation proceedings the matter was referred to the Govt. of India, Ministry of Labour. The Ministry of Labour vide letter dated 30.9.2011, opined that prima facie the Ministry does not consider the dispute fit for adjudication for the reasons that “the management has not violated any rule and adopted any unfair labour practice”. Thus the management pleaded that as the matter has been declined by the Ministry of Labour, hence present claim statement of the Union is not tenable.

9. The worker Union opposed this contention of the management on the ground that Ministry of Labour itself has vide notification No. L-30011/53/2012/IR(M) dated 11.1.2013 referred the following dispute to this Tribunal for adjudication:

“Whether clause 5 of the Settlement dated 8.12.2010 entered on between the management of IOCL, Refineries Division, Panipat Refinery and Indian Oil Panipat Refinery Employees Union under Section 12(3) of I.D. Act, 1947 could be set aside being violative of different sections of Factories Act, 1948 and Industrial Employment (Standing Orders) Act, 1948? If yes, then relief to which Union is entitled?”

10. Besides this on earlier occasion the denial by the Ministry of Labour for referring the dispute of the Barauni refinery has no effect in the present reference and the stand of the management is not well founded because the Ministry of Labour has itself referred the above referred dispute to this Tribunal for adjudication.

11. The management further submitted that the settlement dated 8.12.2010 has been arrived at along with other unions and the present worker union i.e. Indian Oil Panipat Refinery Employees Union, Panipat Refinery, Panipat alone is not competent to raise the dispute regarding any clause of the settlement as other parties to the settlement are also the necessary parties to the dispute. Workman union opposed this contention of the management on the ground that as the clause 5 of the Settlement dated 8.12.2010 is violative of the Section 53 of the Factories Act, 1948 and any party to the settlement can raise the dispute.

12. It is settled law that if any clause of the settlement/agreement is violation of the specific provisions of the law or if that clause is permitted to operate, it will nullify the specific provisions of law. In this regard it would be relevant to mention Section 23 of the Indian Contract Act, 1872 which provides as under:

“23. What consideration and objects are lawful and what not- The consideration or object of an agreement is lawful, unless-

It is forbidden by law, or

Is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

Involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

13. Considering the entire facts and circumstances of the case, if clause 5 of the settlement dated 8.12.2010 is allowed to be permitted, it violate the specific provisions of Section 53 of the Factories Act 1948 and its consequences have been described in Section 23 of the Indian Contract Act 1872. Hence clause 5 of the settlement is violative of the provisions of the Factories Act.

14. In view of the discussion made above, the claimant Union and the management are directed to reconsider the clause 5 of the Settlement dated 8.12.2010 within two months from the date of the publication of the award.

15. Reference is disposed off accordingly. Central Govt. be informed.

Chandigarh.

02.11.2015

S.P. SINGH, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2015

का.आ. 2156.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ संख्या 92/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/11/2015 को प्राप्त हुआ था।

[सं. एल-30011/71/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 6th November, 2015

S.O. 2156.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 92/2012) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 05/11/2015.

[No. L-30011/71/2012 - IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No.92 of 2012, Reference No. L-30011/71/2012/IR(M) dated 01.02.2013

The General Secretary, Indian Oil Panipat Refinery Employees Union, Panipat Refinery, Panipat.

...Union

Versus

The Chief Human Resource Manager, IOCL, Panipat Refinery, Panipat-132140.

...Respondent

Appearances :

For the Workman : Shri Hari Pal Singh.

For the Management : Shri P.Murlidharan.

AWARD

Passed on:- 03.11.2015

Government of India Ministry of Labour vide notification No. L-30011/71/2012/IR(M) dated 01.02.2013 has referred the following dispute to this Tribunal for adjudication:

"Whether the demand of Union for payment of Officiating Allowance for additional work of operation of control panels apart from their basic job in the field is legal and justified? What relief the concerned workmen are entitled to?"

2. On receipt of the reference, notices were issued to the parties. The Union appeared and filed claim statement pleading therein that the workmen of IOCL, Panipat Refinery who are working in panel operation are not getting officiating benefits in accordance with the rules applicable to on officers. It is pleaded that an employee officiating in a post in the scale immediately next above for a period of not less than 15 days or more at a stretch may be allowed an officiating pay @ 10% of his basic pay where, however the period of officiating appointment exceeds three months pay of such an employee shall be fixed in the grade of the higher post as per normal rules governing the fixation of pay on promotion. It is also prayed that in the case of Grade IV to Grade VIII employees who are working in panel operation in some location may be paid officiating allowance as they are performing duties on the higher post and also assuming duties of responsibilities of greater importance and carrying the duties of a higher grade that his own as they are shouldering higher responsibilities of

an officer and not the job of a non-officer working in grade IV to Grade VIII.

3. The management filed written statement. Preliminary objection has been taken that Union is stopped in law to raise the present dispute against the management in as much as the payment of officiating allowance in the corporation is made to only that employee who has been officiating in a post when he/she is required to perform the duties of a post to which another employee holds a lien through a specific order issued by the competent authority which is further governed by the provisions of personnel manual (Indian Oil Corporation Ltd.) and the Memorandum of Settlement arrived at between the management of the Corporation and their workmen represented by the recognised Union before the Regional Labour Commissioner (Central, Chandigarh U/S 12(3) of the I.D. Act 1947 on 6.7.1999 and this settlement is continuing and the latest settlement has been signed on 8.12.2010 before the RLC (Central), Chandigarh. It is further pleaded that in view of this settlement the workmen of the union are not at all entitled to the payment of officiating allowance in the corporation in as much as they were never required to officiate on any post by issuing any orders by the competent authority and the demand of the union is unfair, unwarranted, unjustified and untenable and the reference deserved to be rejected. It is further pleaded that union is also guilty of mis-representation and concealment of managerial facts and deserves no relief.

4. On merits it is pleaded that panel operation is being done by the officers only who are required to monitor, maintain, control and taking corrective action with regard to maintaining various parameters viz. Pressure, temperature, level and flows in their respective plants. The panel officers are also required to supervise the working of Engineering Assistants who are deployed in the field in the workmen category for operation of their respective plants whereas the console is only for viewing display and no equipment is required to be operated from the console necessarily, and installation of consoles significantly reduces the manual efforts required to be put in by the engineering assistants. It is further pleaded that console exists in the Engineering Assistant's room in raw water plant for alarm/ annunciation of the field parameters and after getting the alarm, action is taken by the shift engineering assistant and in this way console helps the shift engineering assistant to quickly identify the defective parameter while sitting in his room rather than going in the field. The management tried to provide modern instruments/ gadgets/operating consoles/PLCs by incurring huge to help the operating person. It is prayed by the management that there is no merit in the demand of the Union and the reference deserved to be rejected.

5. Replication also filed by the Union reiterating the claim made in the claim statement.

6. Both the parties prefer not to lead any oral evidence. The management filed written argument. The representative of the Union orally addresses the arguments.

7. I have gone through the entire record of the case and also gone through the written argument of the management and documents filed by the parties on record.

8. During argument it is submitted by the representative of the Union that the workmen are working on the panel operation which is the work of the officers but are not paid officiating allowance. That such workmen who are working on panel operation are entitled for officiating allowance as they are performing the duties on higher post and also assuming higher responsibilities and carrying the duties of a higher grade than their own.

9. On the other hand the stand of the management is that payment of officiating allowance in the corporation is made to only that employee who has been officiating in a post when he/she is required to perform the duties of a post to which another employee holds a lien through a specific order issued by the competent authority which is further governed by the provisions of personnel manual (Indian Oil Corporation Ltd.) and the Memorandum of Settlement arrived at between the management of the Corporation and their workmen represented by the recognised Union before the Regional Labour Commissioner (Central, Chandigarh U/S 12(3) of the I.D. Act 1947 on 6.7.1999 and this settlement is continuing and the latest settlement has been signed on 8.12.2010 before the RLC (Central), Chandigarh. It is further submitted that in view of this settlement the workmen of the union are not at all entitled to the payment of officiating allowance in the corporation in as much as they were never required to officiate on any post by issuing any orders by the competent authority. It is further submitted by the representative of the management that panel operation is being done by the officers only who are required to monitor, maintain, control and taking corrective action with regard to maintaining various parameters viz. Pressure, temperature, level and flows in their respective plants. The panel officers are also required to supervise the working of Engineering Assistants who are deployed in the field in the workmen category for operation of their respective plants whereas the console is only for viewing display and no equipment is required to be operated from the console necessarily, and installation of consoles significantly reduces the manual efforts required to be put in by the engineering assistants. It is further pleaded that console exists in the Engineering Assistant's room in raw water plant for alarm/ annunciation of the field parameters and after getting the alarm, action is taken by the shift engineering assistant and in this way console helps the shift engineering assistant to quickly identify the defective parameter while sitting in his room rather than going in the field. The management tried to provide modern instruments/

gadgets/operating consoles/PLCs by incurring huge to help the operating person. It is prayed by the management that there is no merit in the demand of the Union and the reference deserved to be rejected.

10. Chapter 5 deals with officiating appointments, according to which written order of a competent authority is required to perform the duties of a post to which another employee holds a lien and an employee may be allowed to draw benefits for officiating against a post involving the assumption of duties or responsibilities of greater importance and carrying a higher grade than his own. Section 5.1.2. deals with conditions for officiating appointments which provides that an officiating appointment may be made in leave vacancy or due to the incumbent on long training or because of the officer being given a special assignment for a temporary period.

11. From the above it is clear that a written order of the competent authority are required to be issued if any workman is given officiating position. The officer are required to monitor, maintain, control and taking corrective actions with regard to maintaining various parameters viz. Pressure, temperature, level and flows and also to supervise the working of engineering assistants who are deployed in the field and console is only for viewing display and no equipment is required to be operated upon from the console which significantly reduce the manual efforts to be put in by the workman staff i.e. engineering assistants.

12. From the above discussion it is clear that there exist no such order passed by the competent authority to order for officiating to any workman as per the Chapter 5 which deals with officiating appointment. Merely watching the display on console cannot be said to be put on officiating duty to any workman by the management.

13. In view of the above, no case is made out for any relief to the Union and the demand of Union for payment of Officiating Allowance for additional work of operation of control panels apart from their basic job in the field is neither legal nor justified and the concerned workmen are not entitled for any relief.

14. Reference is disposed off accordingly. Central Govt. be informed.

Chandigarh.

03.11.2015

S. P. SINGH, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2015

का.आ. 2157.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स एसीसी लिमिटेड गागल सीमेंट वर्क्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट

(संदर्भ संख्या 11/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05/11/2015 को प्राप्त हुआ था।

[सं. एल-29011/8/2015-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 6th November, 2015

S.O. 2157.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2015) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s ACC Ltd. Gagal Cement Works and their workman, which was received by the Central Government on 05/11/2015.

[No. L-29011/8/2015-IR (M)]
NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No 11 of 2015, Reference no. L-29011/8/2015/IR(M) dated 13.07.2015

The President, ACC Gagal Cement Karamchari Sangh (INTUC), PO Barmana, District Bilaspur (HP).

...Workman

Versus

1. The Managing Director, ACC Ltd. Gagal Cement Works, Regd. Office, Cement House 121, Maharishi Karve Road, Mumbai-400020.

2. The Plant Director, ACC Gagal Cement Karamchari Sangh (INTUC), PO Barmana, District Bilaspur (HP).

...Respondents.

Appearances:

For the Workman : Shri Chain Singh Thakur, President of the Union alongwith others.

For the Management : Shri R.K.Thakur, General Manager alongwith Shri S.M.S. Liberhan, Advocate.

AWARD**Passed on: - 03.11.2015**

Government of India Ministry of Labour vide notification No. L-29011/8/2015/IR(M) dated 13.07.2015 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of ACC Limited Gagal Cement Works in stopping the additional gratuity for the workers who participated in National Strike on 28.2.12 is just, legal and valid? If not, to what relief the concerned workers of Union who participated in the National strike could be given?”

2. Case taken up in lok adalat fixed for today. On behalf of the Union Shri Chain Singh Thakur President, Shri Ramesh Kumar, General Secretary, Shri Kansi Ram Vice Present and Shri Ravi Kumar Joint Secretary are present. On behalf of the management Shri R.K.Thakur, General Manager alongwith Shri S.M.S.Librahan advocate are present.

3. After persuasion and negotiation which took place in lok adalat, both the parties agreed to terms and workmen union agreed to withdraw the present reference. They recorded their statement on the margins of the orders sheet. The management also recorded no objection. In view of the statement of the parties, the present reference is returned to the Central Govt. as withdrawn.

4. Reference is disposed off accordingly. Central Govt. be informed.

Chandigarh

03.11.2015

S. P. SINGH, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2015

का.आ. 2158.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड तथा मेसर्स बिहिव सिक्यूरिटी एण्ड सर्विलेंस के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 4/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/11/2015 को प्राप्त हुआ था।

[सं. एल-30012/69/2012-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 6th November, 2015

S.O. 2158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2013) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation, M/s Beehive Security & Surveillance and their workman, which was received by the Central Government on 06/11/2015.

[No. L-30012/69/2012-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND
DOGRA, PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT NO.1, KARKARDOOMA
COURT COMPLEX, DELHI**

ID No.4/2013

Shri Ram Karan Singh,
S/o Shri Nihal Singh,
R/o Gali No.3, Adarsh Nagar,
Jhajjar Road,
Tehsil Bahadurgarh,
HARYANA

.....Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s Indian Oil Corporation Ltd.
Tikri Kalan,
Delhi – 110 041

2. M/s Beehive Security & Surveillance,
House No.43, Rathni Enclave,
New Roshan Vihar,
Kakraola More, Najafgarh,
Delhi – 110 043

...Management

AWARD

Central Government, vide letter No.L-30012/69/2012-IR(M) dated 20.12.2012, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s Beehive Security & Surveillance in terminating the employment of Shri Ram Karan Singh, S/o Shri Nihal Singh from IOC Depot, Tikri Kalan, Delhi with effect from 22.03.2012, is legal and justified? What relief the workman is entitled to?

2. Claim statement was filed by the workman and written statements were filed by both the managements. On perusal of pleadings, it was observed by my learned predecessor, on 25.09.2013, that no other issue, than those referred by the appropriate Government for adjudication was made out. Thereafter, the case was listed for evidence of the parties, with directions to the claimant to conclude first. However, despite affording 16 opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : November 2, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 नवम्बर, 2015

का.आ. 2159.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इंडियन ऑयल कॉर्पोरेशन लिमिटेड तथा मेसर्स बिहिव सिक्कूरिटि एण्ड सर्विलेंस के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 3/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06/11/2015 को प्राप्त हुआ था।

[सं. एल-30012/68/2012-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 6th November, 2015

S.O. 2159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2013) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation, M/s Beehive Security & Surveillance and their workman, which was received by the Central Government on 06/11/2015.

[No. - L-30012/68/2012 - IR(M)]
NAVEEN KAPOOR, Under Secy.

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND
DOGRA, PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT NO.1, KARKARDOOMA
COURT COMPLEX, DELHI**

ID No. 3/2013

Shri Rajvir Singh,
S/o Shri Uday Singh,
R/o Village and Post Office Kanaunda,
Tehsil Bahadurgarh,
Distt. Jhajjar,
HARYANA-124 501

...Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s Indian Oil Corporation Ltd.
Tikri Kalan,
Delhi - 110 041
 2. M/s Beehive Security & Surveillance,
House No.43, Rathi Enclave,
New Roshan Vihar,
Kakraola More, Najafgarh,
Delhi - 110 043
- ...Management

AWARD

Central Government, vide letter No.L-30012/68/2012-IR(M) dated 20.12.2012, referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s Beehive Security & Surveillance in terminating the employment of Shri Rajvir Singh, S/o Shri Uday Singh from IOC Depot, Tikri Kalan, Delhi with effect from 04.02.2012, is legal and justified? What relief the workman is entitled to?

2. Claim statement was filed by the workman and written statements were filed by both the managements. On perusal of pleadings, it was observed by my learned predecessor, on 25.09.2013, that no other issue, than those referred by the appropriate Government for adjudication was made out. Thereafter, the case was listed for evidence of the parties, with directions to the claimant to conclude first. However, despite affording 16 opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

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Dated : November 2, 2015

A.C. DOGRA, Presiding Officer